WORKING for MANITOBA

Workers Compensation for the Twenty-First Century

Report of the Legislative Review Committee on
The Workers Compensation Act
February 2005

This document is available in large print format. Please call the WCB Act Review Committee 2004 at 957-0024.

Letter to the Minister

1 February 2005

The Honourable Nancy Allan
Minister Responsible for *The Workers Compensation Act*
Room 317, Legislative Building
Winnipeg, Manitoba R3C 0V8

Dear Minister:

It has been a great privilege to serve Manitobans by undertaking this review of *The Workers Compensation Act*. We have listened carefully to people from across Manitoba and are thankful for their insight.

We are pleased to send you our completed report, which has our unanimous support.

We would like to take the opportunity to thank the supporting staff for the passion and diligence that they brought to this most important undertaking.

Respectfully submitted,

Wally Fox-Decent

Wally Fox-Decent, Chairperson

Table of Contents

Acknowledgements 4

Foreword 5

The Consultation Process 6

Workers Compensation Past and Present 8

The Principles of Workers Compensation 10

Prevention 12

Coverage 16

Compensability 21

Compensation 25

Return to Health and Work 40

Penalties and Fines 44

Openness and Fairness 48

Understanding Workers Compensation 57

Administering the Workers Compensation Program 61

Costs – Tracking and Accountability 77

Afterword 78

Summary of Recommendations 80

Appendix A: List of Presenters/Submissions Received 95

Appendix B: Brief History of Workers Compensation in Manitoba 105

Appendix C: Costing of Recommendations 110

Acknowledgements

The Legislative Review Committee on *The Workers Compensation Act* would like to thank the following WCB staff for the exemplary support and assistance provided during the public consultations and deliberation phase.

We would like to thank David McCrady (Senior Research and Policy Analyst) for his excellent job in crafting our thoughts into this report, and Barry Warrack (Manager Planning and Evaluation) who coordinated all of the logistical support to the committee.

The following people have assisted the committee with the public consultation phase: Alfred Black (Vice-President Employer Services and Program Development), Wayne Buck (Senior Policy Analyst), George Anderson (Senior Special Investigations Adviser), Andrej Kordalski (Executive Protection Specialist), Agatha Chandran (Research and Policy Analyst), Max Maxon (Contracts and Materials Supervisor), Lesley Leonhardt (Executive Assistant), Cindy Elliot (Administrative Assistant), Maryanne Nawrot (Administrative Assistant), Candace Seymour (Executive Assistant), Patty Seniuk (Administrative Assistant), Pat Macgillivray (Fair Practices Advocate), Warren Preece (Director of Communications), Denise Creed-Bishop (Business Analyst), Jeff Witwicki (Communications Officer), Sue Roth (Vocational Rehabilitation Consultant), Brent Murphy (Vocational Rehabilitation Consultant), Bob Craddock (Director Sector Services), Wayne Wortman (Trainer), Alex McCuaig (Manager Sector Services), Darlene Mulholland (Regional Case Manager) and Tim Young (Service Quality Analyst).

Also providing assistance in costing the recommendations were Michael Rohatynsky (Research and Policy Analyst), Murray Lempen (Manager Financial Planning and Analysis), Peter Wiebe (Unit Supervisor Employer Services Division), Ted Liusz (Assessment Analyst), Shane Lemay (Case Manager), Brian Prigades (Financial Business Analyst), Lorena Trann (Director Finance).

Providing research support were Krista Breckman (Senior Analyst), Rick Dewar (Review Office Coordinator), Lynne Hiebert (Legal Counsel) and Jason Carter (Senior Research and Policy Analyst).

General oversight of processes was provided by Doug Sexsmith (President and Chief Executive Officer), Harold Dueck (Vice-President Finance), David Scott (Associate Vice-President Rehabilitation and Compensation Services), Alice Sayant (Associate Vice-President Healthcare), Janet Sprout (Director Program Development and Review), and Lori Sain (Legal Counsel).

All the above were temporarily or occasionally seconded from the Workers Compensation Board staff. There was, therefore, no additional staff costs involved in this endeavour.

The work of these people was truly outstanding, and the report would not have been completed without them.

Foreword

Workers compensation is a mutual insurance program for workers and employers. It was introduced to Manitoba in 1916 and was the result of an historic compromise – one which guaranteed no-fault benefits for workers in the event of a work-related injury or illness and which protected employers from civil liability.

Workplaces have changed dramatically over the past 20 to 30 years, and workplace-related injuries and illnesses have changed along with them. Traumatic injuries are becoming less frequent, while repetitive strain and other musculoskeletal injuries are becoming more common. It is better recognized today that many injuries and illnesses are multi-factoral in origin and, therefore, there is a greater awareness of previously misunderstood workplace causes.

workplaces have changed dramatically over the past twenty to thirty years ...

Historically, occupational diseases have been underreported to the Workers Compensation Board (the WCB). Long periods of exposure to workplace hazards and long latency periods often made it difficult to determine the connection between workplace and illness. The past two decades, however, have witnessed a dramatic increase in society's technical ability to detect occupational diseases.

Given the changing nature of work and workplace injuries and illnesses, we reviewed the underlying principles of workers compensation to ensure that the program continues to meet the needs of injured workers, their families, and employers in the twenty-first century.

The Consultation Process

In February 2004, the Government of Manitoba announced its intention to hold a public review of *The Workers Compensation Act* (the Act). The public had not been consulted on the legislation in almost 20 years, and it had been over a decade since the Act had seen significant change. It is important to review and refresh the legislation periodically so that the workers compensation program continues to meet the needs of employers, workers and their families in the years ahead.

... it had been over a decade since the Act had seen significant change.

The Workers Compensation Act Legislative Review Committee was made up of four individuals:

> Wally Fox-Decent, Chairperson of the Review Committee,

> Chris Lorenc (President of the Manitoba Heavy Construction Association), representing employers,

> Susan Rogers (ROGERS Leadership Consulting), representing the public interest,

and

> Pete Walker (Health and Safety Representative, Manitoba Federation of Labour), representing workers.

Between April and June 2004, the Committee held public hearings in Beausejour, Brandon, Dauphin, Flin Flon, Gimli, Morden, The Pas, Portage la Prairie, Thompson, Selkirk, Steinbach, and Winnipeg (Transcona, Garden City, St. Boniface, Downtown Winnipeg).

The Committee received 203 submissions, representing the spectrum of WCB stakeholders: labour organizations, employer organizations, individual workers and employers, worker representatives, service providers, non-profit organizations and associations, and government agencies. In all, stakeholders made hundreds of separate suggestions for change.

Stakeholder submissions may be viewed on-line at www.wcbactreview.com, or you may receive copies of submissions by mail by writing to:

The Workers Compensation Review Committee Consultation
P.O. Box 1770
Station Main
Winnipeg, MB R3C 2Z9
Email: info@wcbactreview.com
Phone: (204) 957-0024
Fax: (204) 954-4995
Call Us Toll Free: 1-866-868-4214

When we required additional information or clarification, we invited groups and individuals to meet with us and, thereby, assist us in the process.

We reviewed relevant published literature and our support staff prepared a considerable amount of research and background materials. We also studied compensation programs in other Canadian jurisdictions.

we were privileged to hear and consider the views of Manitobans from across the province

We were privileged to hear and consider the views of Manitobans from across the province. The results of this cross-pollination are the following 100 recommendations which we believe will ensure the relevancy of workers compensation in the twenty-first century.

Workers Compensation Past and Present

Before the establishment of workers compensation, most workers who suffered workplace injuries or illnesses did not receive compensation and had to sue their employers for damages. Going through the courts presented significant difficulties for both workers and employers. Redress took a very long time and usually meant legal fees that many workers simply could not afford. When a worker or a group of workers was successful in suing an employer, especially in the case of a catastrophic accident, the costs could drive the employer into bankruptcy.

workers compensation is an injury and illness insurance program for employers and workers

A solution was developed, first in Europe, that provided guaranteed benefits to injured workers and which spread those costs among all employers. Beginning in the early twentieth century, workers compensation programs were established in Canada.

Workers compensation is an injury and illness insurance program for employers and workers. Participating employers do not pay the direct costs of the injuries or diseases sustained by their workers in the course of their work. In turn, covered workers who are injured or who become ill in the course of employment are entitled to compensation benefits regardless of fault. However, workers give up their right of legal action against an employer in return for the certainty of no-fault benefits.

Workers compensation currently covers about 70 percent of Manitoba workers. If a workplace is not covered by workers compensation, workers who suffer a workplace injury or illness retain the right to sue their employers for compensation.

In Canada, provincial and territorial workers compensation law usually covers a majority of workers. When coverage is not required by law, there are opportunities for employers to purchase optional

workers compensation protection. Also, an employer may voluntarily compensate injured workers, or a collective agreement may provide a disability plan through private insurance.

Assessments are levied upon employers and gathered into a common fund out of which benefits are paid to workers who are injured or become ill as a result of their employment. Administration of the insurance program and decision-making with respect to workers' claims are carried out by the WCB.

Stakeholders commonly believe that the WCB is a government-funded program. In fact, the WCB is funded by participating employers through premium charges on payroll incomes, and from investment income derived from those premiums.

In 2003, the WCB collected just over $162 million in premiums. Its investment income in 2003 was nearly $22 million, down from recent years as a result of the downturn in the stock market since 2001.*

Through a series of surplus budgets and good return on its investments, the WCB paid off its accumulated debt of $232 million in 1996 and has since established a healthy reserve fund.

the workers compensation system is an essential partnership between workers and employers that works

To allocate the costs of compensation appropriately among employers, the great majority of employers are grouped together into a common pool. These employers are collectively liable for the costs of claims arising in their workplaces. A small group of employers, government agencies and bodies once regulated by the federal government, including the railways and air transportation companies, are "self insured." They pay the direct costs of claims arising in their workplaces and administrative costs.

The workers compensation system is an essential partnership between workers and employers that works.**

* WCB of Manitoba 2003 *Annual Report*.

** More information on the WCB of Manitoba can be found at www.wcb.mb.ca. More information on workers compensation bodies across Canada can be found on www.awcbc.org, the website of the Association of Workers' Compensation Boards and Commissions of Canada.

The Principles of Workers Compensation

When charting the future of workers compensation, it is instructive to remember the past. In 1910, the Ontario government commissioned Chief Justice William Meredith to produce a report on workers compensation for that province.

... principles provide a foundation ... for Manitobans into the twenty-first century ...

Meredith reviewed workers compensation programs including those in the United States, France, Belgium, the United Kingdom, and Germany. He recommended a program based on collective liability and a wage-loss approach to calculating benefits. Meredith's 1913 report contained the list of principles that underpinned the program he envisioned, and which eventually became the foundation of programs across Canada.

During our consultation phase, it became evident that the Meredith principles need to reflect today's realities in order to meet the challenges of tomorrow and beyond.

The following principles provide a foundation on which we will build workers compensation for Manitobans into the twenty-first century:

> **Prevention**, whereby workplaces benefit from WCB-led efforts to prevent workplace injuries and illnesses from occurring;

> **No fault**, the "historic compromise" under which workers gain the right to benefits and employers gain immunity from lawsuit regardless of fault;

> **Collective liability**, under which all participating employers share responsibility for the costs of the system;

> **Return to health and work**, whereby injured workers receive optimum medical recovery through

expeditious and effective medical treatment and return to work in a timely and safe manner under the leadership of the WCB in partnership with employers, workers and health-care providers;

- **Independent administration**, under which an arm's-length agency of the government assumes responsibility for the collection of employer contributions and the awarding and distribution of benefits to injured workers and their dependents;

... workers compensation ... needs to reflect modern realities

- **Exclusive jurisdiction**, under which the WCB has the power to inquire into, re-hear and re-adjust all issues as necessary without review by the courts, except in very limited circumstances;

- **Security of payment**, whereby workers receive guaranteed payment from a pooled accident fund under the prudent fiscal management of the WCB, regardless of the ability of the accident employer to pay; and

- **Income-replacement benefits based on wage loss**, whereby injured workers receive income replacement based on a calculation of wages lost as a result of the injury or illness.

Recommendation:

1. The principles of workers compensation should guide the delivery and administration of workers compensation in Manitoba into the twenty-first century.

Prevention

Every year more than 35,000 Manitoba workers suffer injuries and illnesses at workplaces covered by workers compensation. On average, some 20 worker lose their lives at work each year.

... each incident of work-related injury and illness represents an opportunity for prevention.

We believe each incident of work-related injury and illness represents an opportunity for prevention.

The Mandate for Prevention

Five years ago, Manitoba had the highest time-loss injury rate of any jurisdiction in Canada.*

Since then, Manitobans have become increasingly aware that workplace injuries and illnesses are indeed preventable. It is becoming socially and morally unacceptable to maintain unsafe workplaces.

The shift in social attitudes toward workplace safety and injury prevention has been part of a process. The first step began in 2001 and 2002, when the Government of Manitoba commissioned a major review of workplace safety and health in Manitoba.

As a result of that review, the Government directed the WCB and the Workplace Safety and Health Division of Manitoba Labour and Immigration (WSHD) to assume joint responsibility for injury prevention and to achieve a 25 percent reduction in the time-loss injury rate over five years.

The WCB and the WSHD launched an ambitious and successful injury and illness prevention strategy that in three years has achieved a 19 percent reduction in the time-loss injury rate.**

* Association of Workers Compensation Boards (AWCBC), Key Statistical Measures, 2000.
** Manitoba Injury and Illness Statistics Report, 2000-2003.

The WCB has partnered with and facilitated industry-based safety associations. This has led to the development of safety certification programs and, in participating industries, a demonstrable change in workplace safety attitudes and a reduction in the number of injuries.

Yet, Manitoba still retains one of the highest time-loss injury rates in Canada.*

Joint responsibility for injury prevention has had some effect. We believe that prevention efforts will move forward significantly if there is now a clear assignment of roles.

... prevention must be a primary focus of the WCB ...

Recommendation:

2. The Act should be amended to make the critical role of prevention the prime responsibility of the WCB, while enforcement of *The Workplace Safety and Health Act* and its regulations should remain with the WSHD.

A New Relationship for Continued Cooperation

Prevention and enforcement are truly flip sides of the same coin. After the mandate of prevention is transferred to the WCB, the Government of Manitoba should reorganize the WSHD to enable it to concentrate on effective and efficient enforcement.

Recommendation:

3. The Government of Manitoba should reorganize the WSHD to be a highly effective enforcement agency.

* AWCBC Key Statistical Measures, 2002

Funding Arrangements

Under the current Act, the WCB funds 95 percent of the operational costs of the WSHD.

We believe prevention must be a primary focus of the WCB and be paid for by the WCB. Enforcement should be the responsibility of the WSHD and be paid for by the Government of Manitoba. Accountability must be part of all funding arrangements.

employers with return to work programs report higher morale and improved production quality

The mandate of the WCB should be funded by the WCB. The mandates of other agencies should be funded elsewhere.

Recommendation:

4. The Act should be amended so that the costs of enforcement as currently undertaken by the WSHD, be borne by the general revenues of the Province of Manitoba.

Incentives for Prevention and Return to Work

Workplaces that adopt health-and-safety and return-to-work programs have been successful in reducing work-related illnesses and injuries and minimizing their impact. Employers who have implemented such programs also report lower staff turnover and absences, higher staff morale, and improved production quality because health and safety are built into the work process.

To help offset the significant costs to employers of implementing workplace prevention and return-to-work initiatives, we believe the WCB, through its rate structure, should provide incentives to employers that implement successful initiatives in these areas. Receiving safety accreditation from a recognized provider would be one method of developing such initiatives.

Recommendation:

5. **The WCB, through its rate structure, should provide incentives to employers that have implemented successful prevention and return-to-work initiatives, including those developed through accreditation programs.**

Coverage

"Coverage" refers to those employers whose workers are eligible for workers compensation if they suffer a workplace injury or illness.

It has been over four decades since there has been significant change to the level of coverage. Despite minor revisions over the years, the list of compulsory industries has not been thoroughly reviewed and updated since 1959.

Manitoba has one of the lowest percentages of covered workers in Canada

Over this time period, there has been significant change in Manitoba workplaces. Many industries that have developed over time do not fall clearly within the scope of any of the compulsory industries listed in the Act.

For example, the operation of aircraft was not a significant industry in 1917 when the Act was first enacted and this industry even today is not subject to compulsory coverage. Airlines can and many do obtain optional coverage. However, other forms of transportation such as trucking, bus and rail transport are listed as compulsory industries.

Interpretations about which industries are covered made over many years by the WCB have resulted in anomalies in how employers are classified. For example, the inside cleaning of windows is a compulsory industry, but the outside cleaning of windows is considered non-compulsory. Likewise, the retail sale of an article is compulsory, but renting the same article is not. In both instances, both groups of workers do the same type of work and may or may not be exposed to similar risks, yet, coverage is not extended to them all. The WCB has conventionally described such non-compulsory industries as the "cousins" of compulsory industries.

As a result of the development of new industries and the interpretation of the Act, the current Act provides compulsory coverage for approximately 70 percent of Manitoba workers. This is one of the lowest percentages of covered workers in Canada.

It is time to review the present level of coverage and how it might be extended to non-compulsory industries. This review should occur gradually over a period of time in dialogue with workplaces that are not currently covered.

This review of the level of coverage would begin with currently non-compulsory industries, including those that are clearly associated with workplaces that are already covered and where the risk of injury and illness is high.

Recommendations:

6. **WCB coverage of workplaces should be extended gradually over a three- to five-year period beginning with the inclusion of higher-risk workplaces that are not already covered.**

7. **The extension of coverage should only occur after employers and workers in those industries where extension might occur have had a full and free opportunity for consultation and discussion. This dialogue should be initiated by the WCB.**

8. **A vigorous program should be developed by the WCB to encourage low-risk workplaces to opt into WCB coverage.**

9. **All aspects of coverage should be reviewed in five years.**

Excluded Persons in Compulsory Industries

Although "workers" in compulsorily covered industries are automatically covered by the workers compensation program, there are many individuals working in those industries (and exposed to the hazards and risks of those workplaces) who do not meet the definition of "worker" in the current Act, and who are not subject to mandatory coverage.

individuals who participate in work-experience programs are exposed to the hazards of an industry

Individuals who participate in work-experience programs are exposed to the hazards of an industry. Job training or work experience can take various forms, including paid and unpaid placements. Coverage is not always available. In addition, the trainee's employer will depend on when and whether the trainee fits into the definition of "worker."

Recommendation:

10. The Act should be amended so that individuals engaged in work-experience programs are considered to be workers.

Resident family members of business owners are also excluded from the definition of worker in the current Act. A resident family member would include a spouse, partner, or child living at home and working for the family business. If this same person established his or her own residence and continued working for the family business, he or she would then be defined as a worker.

Recommendation:

11. The Act should be amended so that resident family members of business owners are considered to be workers.

Optional Coverage for Volunteers

Manitoba has one of the highest rates of volunteering in Canada.* However, individuals who volunteer their time to non-profit or charitable organizations do not have coverage through the workers compensation system for volunteer activity.

Coverage has not been provided to volunteers because their non-profit or charitable "employers" have not paid any assessment on their non-volunteer earnings and because volunteers are not considered workers under labour law.

Volunteers can, however, be exposed to risk of injury, and, for this reason, non-profit or charitable organizations should be allowed to obtain workers compensation for them.

Individuals who volunteer for non-profit or charitable organizations are not paid a wage for that work, but many will have earnings from other paid employment. These "concurrent earnings" should be covered in the event of a workplace injury or illness to a volunteer.

individuals who volunteer their time to non-profit or charitable organizations do not have coverage ... but are exposed to risk of injury

Recommendations:

12. The Act should be amended to permit non-profit and charitable organizations to purchase optional coverage for their volunteers based on risk and prevention models for volunteers, the process to be determined by regulation by the WCB.

* National Survey for Giving, Volunteering and Participating in Canada, Statistics Canada, 2000

13. This extension of coverage should be brought into effect after employers and volunteers in these organizations have had a full and free opportunity for consultation and discussion. This dialogue should be initiated by the WCB.

Directors of Corporate Employers

exposing directors of corporate employers to lawsuits is contrary to the spirit of the historic compromise

Directors of corporations are in a difficult situation with respect to workers compensation law.

An individual who operates an unincorporated business within a compulsory industry and who employs workers is an employer and must pay assessments on his or her payroll. Yet, once that individual incorporates his or her business, the business – the corporation – becomes a legal person and is considered to be the employer.

Unless they purchase optional coverage, these directors of corporations are neither employers nor workers and may be sued if a worker sustains a workplace injury or illness.

The distinction made between a corporation and the directors of that corporation may be seen as artificial. Exposing directors of corporate employers to lawsuits by workers is contrary to the spirit of the historic compromise when workers gave up their right to sue employers in return for security of compensation.

Recommendation:

14. The Act should be amended so that directors of corporate employers are considered to be employers for purposes of the immunity to suit provisions of the Act.

Compensability

The basic test of compensability under the workers compensation model is met if an accident arose out of and in the course of one's employment. The accident must have happened at work or while working for the employer or doing one's employment duties. The determination that a claim is compensable is made on the balance of probabilities, which means that the conclusion needs to be more likely than not for there to be compensation.

Employers' Premises

Work can be performed almost anywhere – not just in offices or factories, but on city streets, in stands of timber, on farms, or at home. Current WCB policy contemplates static workplaces such as factories or mines, and is not easily applied when accidents occur elsewhere. Mobile workplaces such as transit busses sometimes create a challenge.

WCB policies that address where work is performed need to be reviewed to establish whether they are adequate for determining the work-related ness of injuries and illnesses.

Recommendation:

15. The WCB Board of Directors should review and update the definition of employers' premises and related policies to ensure that they meet the challenge of changing workplaces.

Occupational Diseases

It is increasingly clear that occupational diseases are underreported to the WCB. In many cases, workers do not experience the symptoms of a disease until years after they have been exposed to the hazard that has caused them. In addition, many illnesses can be the result of exposures to numerous different hazards. The long delay between

exposure and onset, and the multi-factoral nature of many illnesses make it difficult for a physician or the affected worker to recognize whether a worker's condition is linked to workplace exposures.

With the exception of certain claims submitted by firefighters, the WCB currently adjudicates all occupational disease claims on a case-by-case basis and uses the legislated test of "dominant cause" to determine if the claim is compensable.

workers do not experience the symptoms of a disease until years after they have been exposed

When a disease is due in part to the employment of the worker and in part to other causes, the Act requires the employment to be the dominant cause of the disease for a claim to be compensable. The dominant cause provision may appear to require a higher burden of proof than the balance of probabilities test used to adjudicate claims in workers compensation decisions. Dominant cause, however, is still adjudicated on the balance of probabilities.

Better science is making it possible to determine linkages between work and disease for the first time, and will undoubtedly dramatically increase our understanding of occupational disease.

We believe the WCB must closely monitor this developing research because persuasive and compelling new evidence may, in future, require the model of dominant cause to be reviewed.

Recommendations:

16. Dominant cause should remain the fundamental test for adjudicating occupational disease claims.

17. The WCB should continue to monitor the evolving science to determine when and if to broaden the coverage of occupational diseases.

Firefighters and the Act

The Act was amended in 2002 to provide compensation for full-time firefighters who are regularly exposed to the hazards of a fire scene, other than a forest fire scene, for a prescribed minimum period and who contract primary site brain, bladder or kidney cancer, primary non-Hodgkin's lymphoma or primary leukemia. The firefighter amendment was based on the latest scientific and medical evidence available at that time.

Newer studies and newer interpretations of existing studies have led some researchers to conclude that the heightened risk to full-time firefighters of developing cancers of the colon and ureter is sufficient to merit inclusion within the legislation. These same studies do not support the inclusion of lung cancer or heart disease.

better science is making it possible to determine linkages between work and disease for the first time

We note that the WCB has again retained an internationally recognized physician, epidemiologist and researcher to update the most recent scientific evidence with respect to possible expansion of the full-time firefighter legislation. This information should be available in early 2005.

Recommendation:

18. The Act should be amended, on the basis of scientific evidence, to add primary-site cancers of the colon and ureter to the sections regarding full-time firefighters.

Voluntary/Part-Time Firefighters

The WCB is funding a scientific study using Manitoba data to determine the relationship between part-time and volunteer firefighting and certain cancers.

Recommendation:

19. **The results of the study currently being undertaken among volunteer firefighters in Manitoba should guide whether to expand the sections of the Act regarding firefighters to volunteer and part-time firefighters.**

Compensation

The current Act provides for a range of WCB benefits to injured workers and their families.

When a worker experiences a workplace injury or illness and a loss of earning capacity, he or she is usually eligible for wage-loss benefits, medical aid, and vocational rehabilitation. In keeping with the principles of workers compensation, the wage-loss provisions are designed to compensate injured workers fairly for their financial loss due to work-related injury.

wage-loss provisions are designed to compensate injured workers fairly for their financial loss

If a worker receives a disability as the result of an accident, he or she may also be eligible for a permanent impairment lump-sum award. These one-time payments are intended to recognize the financial impact of an impairment beyond the loss of earning capacity a worker has sustained.

In the case of a workplace fatality, the worker's survivors may be eligible for various benefits, including a lump-sum monetary award, monthly payments and vocational rehabilitation assistance.

Wage-Loss Benefits
Waiting Periods

The waiting period for wage-loss benefits under the current Act is one day. In other words, wage-loss benefits are payable beginning the day following the date of accident. Some workers may lose a day's pay as a result of a workplace accident.

Recommendation:

20. The Act should be amended so that employers pay a worker's regular earnings for the day of the accident.

Simplifying How Wage-Loss Benefits Are Calculated

A worker's probable Canada Pension Plan (CPP) contribution is deducted from his or her gross earnings as part of the calculation to determine wage-loss benefits. This is a notional deduction and no contribution is submitted to the federal government on the worker's behalf as this is not permitted by federal law.

a worker who is injured or becomes ill as a result of a workplace accident is entitled to compensation for the loss of his or her earning capacity

A worker's CPP benefits may be affected if he or she has not made contributions by virtue of being on workers compensation. We believe that the time an injured or ill worker remains on workers compensation should not have an impact on entitlement to CPP benefits.

It is our view that, because a worker's CPP deductions are not eligible for submission, they should not be deducted from his or her net average earnings. Workers would be advised to use this amount for their own investment and retirement planning.

Recommendation:

21. The Act should be amended so that a worker's CPP contributions are not deducted in determining net average earnings.

Under the current wage-loss model, wage-loss benefits paid to an injured worker equal 90 percent of his or her loss of net earning capacity for a maximum of 24 months, and 80 percent of his or her loss of net earning capacity after 24 months.

Manitoba is the only jurisdiction in Canada that reduces wage-loss benefits at any point in a claim.*

* *AWCBC, Comparison of Workers' Compensation Legislation in Canada, 2004*

An important principle of workers compensation is that a worker who is injured or becomes ill as a result of a workplace accident is entitled to compensation for the loss of his or her earning capacity. The reduction of benefits after 24 months is not in keeping with this principle. A worker's financial obligations do not diminish once he or she has been on workers compensation for 24 months.

Recommendation:

22. The Act should be amended so that wage-loss benefits are calculated with no reduction to 80 percent after two years.

Many workers do not understand how their wage-loss benefits are currently calculated. Determining a worker's average earnings and explaining the probable deductions used to calculate net average earnings can be difficult and confusing.

many workers do not understand how their wage-loss benefits are currently calculated

Recommendation:

23. A worker's wage-loss benefits, assuming a worker has no post-accident earnings, should be calculated by deducting probable income tax and Employment Insurance contributions from gross earnings and multiplying the remainder by 90 percent.

Maximum Insurable Earnings

A worker's insurable earnings are currently subject to a limit. This amount is indexed annually and is $58,260 for 2005. Any earnings a worker has in excess of the limit are not insured if the worker suffers a workplace injury or illness. Many workers in many occupations earn more than the limit.

So that a worker who experiences a workplace accident is fully compensated for his or her lost earnings, the limit on insurable earnings should be removed.

We believe Manitoba should become the first jurisdiction in Canada to take this step.

Recommendation:

24. The Act should be amended by removing the limit on insurable income.

no worker should earn less than minimum wage

Minimum Wage-Loss Benefits

Many Manitoba workers earn the minimum hourly wage. If a minimum-wage earner is injured or becomes ill on the job, the current wage-loss model, based on 90 percent of net average earnings, brings these individuals below minimum wage.

No worker should earn less than minimum wage, and wage-loss benefits should reflect this. Providing a minimum wage-loss benefit may create a category of claimant receiving more than 90 percent of his or her net loss of earning capacity, but this is outweighed by the need for equity and compassion.

Recommendation:

25. The Act should be amended so that a worker's wage-loss benefits will not be less than 100 percent of the Manitoba minimum wage at the time of accident.

Ensuring Continuity of Payment

A worker's income should not be interrupted as a result of a workplace injury or illness. We believe the Act should be amended

to require employers to continue to pay wages to injured workers for up to 10 working days, after which employers would be reimbursed by the WCB for all but the day of accident.

It would also serve to highlight the stark facts of workplace injuries and illnesses to employers and encourage them to be more conscientious of prevention.

Recommendation:

26. The Act should be amended so that employers pay workers who experience a workplace injury or illness their regular net income for up to one full pay period and then the employer be reimbursed by the WCB for all but the day of accident.

any worker employed in a covered industry, regardless of his or her age is covered

Presumed Retirement Age

The retirement age in Manitoba is shifting. The average retirement age has declined somewhat over the past 10 years, but is now showing some evidence of moving upward, reflecting the aging of society and the decision of many older workers to continue working or to take on casual work after retirement.*

Wage-loss benefits under the current Act are payable until a worker reaches 65 years of age, or until he or she has recovered from the accident and is able to return to work. For workers who are over the age of 63 at the time of their accident, wage-loss benefits may be payable for up to 24 months.

During the course of the public hearings, it became clear that many workers share a perception that wage-loss benefits are payable only if an injured worker is less than 65 years of age. In fact, any worker employed in a covered industry, regardless of his or her age, is covered and is eligible to receive wage-loss benefits if he or she suffers a loss of earning capacity as the result of a workplace injury or illness.

* "You Can't Always Get What You Want: Retirement Preferences and Experiences", Statistics Canada, Canadian Social Trends, Winter 2004

Not only are all workers in covered industries covered, regardless of age, we recognize that many older workers have decided to continue working and that many older workers take longer to recover from workplace injuries and illnesses. We, therefore, believe wage-loss eligibility for older workers should be extended for up to four years from the current two.

a fundamental principle is that workers should not receive more in compensation benefits than they did while working

Recommendation:

27. The Act should be amended so that workers who are 61 years of age or older will be eligible to receive wage-loss benefits until they are fit to return to work, or for four years, whichever occurs sooner.

Special Additional Compensation

The Act as it existed before January 1, 1992, also known as the "Old Act," allowed the WCB to pay long-term wage-loss benefits to workers who were unable to recover their pre-accident earnings level in certain circumstances. These benefits, known as Special Additional Compensation, end when a worker regains his or her pre-accident earnings or reaches 65 years of age.

In 1985, the WCB Board of Commissioners introduced a policy to provide a post-retirement supplement to workers who had received Special Additional Compensation up to their retirement date. The intent of the policy was to compensate workers for any possible loss of pension credits that occurred as a result of receiving Special Additional Compensation instead of employment income. The Supplement was to be paid until the worker died.

In 1994, the Board of Directors introduced an eligibility test for receipt of the Supplement. Eligibility was limited to those workers who had actually lost an entitlement to participate in a company

pension plan as a result of a compensable accident. Although the eligibility test was revised from time to time, the concept that the worker must have lost the opportunity to participate in an employment-related pension plan remained.

The WCB did not apply the eligibility test consistently from 1994 until 2000. Most workers who had received Special Additional Compensation during that period were left with the impression that they would receive a Post-Retirement Supplement at retirement. The WCB subsequently applied the eligibility test as intended by policy and has advised about 150 workers that they are not, in fact, eligible for the Supplement when they reach retirement age.

We understand that these approximately 150 workers planned for their retirement fully expecting to receive a Post-Retirement Supplement.

We have considered this operational issue in the context of the entire workers compensation program and have concluded that it requires the attention of the Board of Directors, not the Government of Manitoba.

Recommendation:

28. The issue of Post-Retirement Supplements should be returned to the WCB Board of Directors for their consideration, after consultation with stakeholders.

Post-Accident Earnings

Post-accident earnings are employment earnings received while a recovering worker is still receiving wage-loss benefits. Many workers will receive some post-accident earnings when they return to modified or alternate duties. Post-accident earnings are deducted from wage-loss benefits during this period.

Sometimes a recovering worker's earnings after an accident do not reflect his or her earning capacity. Although not a widespread issue, it can happen that a worker has returned to full-time modified duties, remains on partial wage-loss benefits, and then has his or her benefits reduced by the amounts earned working overtime.

Overtime earnings reflect the extra effort made by a recovering worker, and are not a true reflection of his or her earning capacity.

Recommendation:

29. The WCB Board of Directors should review their policies relating to post-accident earnings to ensure that overtime earnings are not deducted from wage-loss benefits.

Collateral Benefits

In addition to WCB benefits, injured workers may receive benefits from other sources as a result of a workplace injury. These are called collateral benefits and include any additional benefits an injured worker receives under the Canada Pension Plan, the Quebec Pension Plan, the *Employment Insurance Act*, a disability insurance plan, and payments to the worker by his or her employer, known as top-up benefits.

A fundamental principle underlying workers compensation is that workers should not receive more in compensation benefits than they did while working. Overcompensation can occur when injured workers receive collateral benefits.

Collateral benefits are either deducted from a worker's wage-loss benefits, or they are considered earnings after the accident, depending on whether the benefits are taxable or non-taxable. Collateral benefits are deducted from compensation benefits to ensure that the total amount of benefits received from the various sources does not add up to more than 90 percent of the worker's net actual loss of earning capacity.

Wage-Loss Top-Ups

Employer top-ups are payments made to workers to make up the difference between wage-loss benefits calculated at 90 percent of net and their regular take-home pay. Since January 1, 1995, employer top-up benefits have been treated as collateral benefits and are deducted from wage-loss benefits.

However, if a collective agreement that was in effect on January 1, 1992, provided for top-up benefits, the top-up is not deducted from the worker's wage-loss benefits, as long as certain criteria are met.

In addition, employees of the Government of Canada may receive top-up.

The provisions dealing with employer top-ups have been difficult to comprehend and to implement. There is a perception of unfairness that only workers who had a collective agreement prior to 1992 allowing top-up are permitted to retain this benefit, while unrepresented workers and newly unionized workers are not able to negotiate this benefit.

Workers in these situations who purchase insurance from private insurers or have these benefits paid by their employer to make up the difference between wage-loss benefits and their regular take-home pay have this money treated as collateral benefits.

We are of the opinion that employers, regardless of whether or not their workers are unionized, should be permitted to negotiate or offer top-up benefits to their workers. In addition, we believe workers who purchase insurance from private carriers to cover the difference between wage-loss benefits and regular take-home pay should they suffer a workplace injury or illness should not have that amount deducted as a collateral benefit.

Allowing wage-loss benefits to be topped-up to 100 percent of net loss of earning capacity mitigates a worker's financial loss.

This provision must not be allowed to serve as an incentive to remain off work unnecessarily. We are of the opinion that the WCB and employer community would expect any worker who is receiving top-up to work actively towards his or her recovery by continuing medical treatments or vocational rehabilitation.

Recommendations:

30. The Act should be amended to allow employers to top-up the difference between wage-loss benefits and a workers' regular take-home pay.

31. The Act should be amended to allow workers to purchase private insurance to top-up the difference between wage-loss benefits and their regular take-home pay.

many workers who are entitled to a CPP Disability pension will likely never return to work owing to the nature of their impairment

CPP Disability Pensions

On occasion, an injured worker will be entitled to wage-loss benefits and may be eligible for a CPP Disability pension. If the worker applies for and receives a CPP Disability pension, these payments are considered by the WCB as collateral benefits.

We note that many workers who are entitled to a CPP Disability pension will likely never return to work owing to the nature of their impairment.

Recommendation:

32. The Act should be amended to allow workers to top-up the difference between wage-loss benefits and their regular take-home pay using a CPP Disability pension.

WCB Retirement Annuities

Workers who have been in receipt of wage-loss benefits for more than 24 months may also be eligible for retirement annuities from the WCB. The amount the WCB invests on the worker's behalf is five percent of the future wage-loss benefits payable to the worker, less any contributions his or her employer continues to make to a pension plan.

The value the WCB contributes is an approximation of the amount the typical employer contributes to employee pensions. Workers may also contribute up to a like amount to their WCB retirement annuity.

Occasionally, employer contributions to employee pension plans are greater than that contemplated by the Act.

a new formula needs to enhance awards for lower levels of impairment

Recommendation:

33. The Act should be amended to allow the WCB to match an employer's contribution to a worker's pension, to a maximum of seven percent, when an employer contributed more than five percent to the worker's pension.

Permanent Impairment Awards

Permanent impairment awards recognize the future financial impact of an impairment beyond the loss of earning capacity a worker has sustained.

We have reviewed the current value of permanent impairment awards, which are indexed annually, and concluded that awards made for each percentage of impairment at lower levels do not adequately reflect the financial impact these impairments have on workers' daily life.

A new formula needs to be established that enhances awards for lower levels of impairment while ensuring that awards at other levels are not reduced.

Comparison of Current and Proposed Awards for Permanent Impairment, 2005

Level of Impairment, by Percentage	Current Value ($)	Proposed Value ($)
1	640.00	1,030.00
4	640.00	4,120.00
5	1,280.00	5,150.00
10	1,280.00	10,300.00
11	2,560.00	11,330.00
15	7,680.00	15,450.00
30	26,880.00	30,900.00
31	28,160.00	32,140.00
40	39,680.00	43,300.00
50	52,480.00	55,700.00
100	116,480.00	117,700.00

Under the model proposed above workers who are rated at 100 percent impairment will continue to receive the highest award for permanent impairment among the provinces.*

Recommendation:

34. The Act should be amended so that awards for permanent impairments be calculated as follows for 2005 accidents: $1,030.00 for each full percentage of impairment less than 31 percent and $1,240.00 for each percentage of impairment above 30 percent for a 2005 accident. These values will continue to be indexed annually.

* The maximum value of impairment awards in 2005 in those jurisdictions that have dual-award systems are as follows: Québec – $86,601; Ontario – $75,486.74; Alberta – $73,205.40; New Brunswick – $50,900.00; Prince Edward Island – $42,300.00; Saskatchewan – $45,200.00; Newfoundland and Labrador – $46,275; Yukon – $125,015.80. Data are from the each workers compensation authority.

Survivor Benefits

The current model contemplates one lump-sum award, be it a permanent impairment award or a fatal lump-sum benefit, for any one accident. If a worker is granted a permanent impairment award following a workplace accident, and later dies as a result of the accident, the lump-sum benefit for the fatality granted to his or her surviving spouse or partner is reduced by the amount of that permanent impairment award.

We believe an award granted to a surviving spouse or partner should be separated from any award given to the worker prior to his or her death. A permanent impairment award recognizes the incremental financial costs that an impairment causes a worker, while a survivor award recognizes the financial consequences to a family that result when a worker dies. These are two separate life-altering transitions.

Recommendation:

35. The Act should be amended so that lump-sum awards granted to surviving spouses and partners not be reduced by the value of impairment awards granted to the worker prior to his or her death.

Under the current Act, the date of accident determines benefit entitlement. In occupational disease claims, the date of diagnosis is often accepted as the date of accident. The date of death can be long after the date of accident.

Dependents become entitled to survivor benefits on the date of death but the amounts are based on the date of accident. For example, if a worker's accident date is 1994 but the worker dies in 2005, the monthly payment to the dependent child, based on a 1994 date of accident, would be $260.00, compared with $320.00 for a 2005 accident.

To ensure that dependents receive compensation based on today's cost of living, the Act should be amended so that the date of death applies to determine benefit levels.

Recommendation:

36. The Act should be amended so that the date of death will apply when determining benefit levels for dependents.

reductions to awards made solely on the basis of age are arbitrary and unsupportable

The costs of funerals have increased in recent years. The amount provided for funeral expenses under the Act is too low.

Recommendation:

37. The Act should be amended so that the amount granted to cover funeral expenses is increased to $9,310.00 in 2005 and that this amount be indexed annually.

Age-Related Reductions to Permanent Impairment Awards and Survivor Benefits

Age is considered on a case-by-case basis when determining a worker's level of impairment. Age, for example, may be considered when determining the level of impairment to one's strength or one's cardiovascular or respiratory capacity.

Once a worker's level of impairment is assessed, it is converted into a monetary award. Currently, the Act provides for further reductions to lump-sum awards for impairments or fatalities if the worker is over the age of 45. These awards are reduced by 2% for each year that the worker is over 45 years of age, up to a maximum of 40%. Reductions to awards made solely on the basis of age are arbitrary and unsupportable.

Most workers compensation authorities do not reduce permanent impairment awards and survivor benefits.

Recommendation:

38. Present provisions in the Act that reduce impairment awards and survivor lump-sum benefits on the basis of age should be removed.

Transporting Injured Workers to Hospital

Under the current Act, it is the responsibility of an employer to pay to transport an injured or ill worker to a hospital or to a place where proper medical care can be given.

Owing to the remoteness of some workplaces, employers must make provision for transportation, such as air ambulance. These employers are at a disadvantage compared to those located in urban areas. The costs of transportation should be paid by the WCB.

Recommendation:

39. Although it is the employer's responsibility to make provision for the transportation of injured workers to a hospital, the Act should be amended so that any costs associated with this transportation are paid by the WCB.

Return to Health and Work

Returning to work as soon after an injury or illness as it is safe to do so leads to a better recovery and reduces the potential impact of the injury or illness on the worker's quality of life.

early return to work also reduces the impact of injuries and illnesses

Work becomes part of the treatment and rehabilitation of the injury or illness and allows the worker to take a more active role in his or her recovery. Early return to work also reduces the impact of injuries and illnesses on the employer's business.

Return to Health

Timely access to diagnosis, treatment, and rehabilitation minimize the trauma, disruption to family life, and financial impact of a workplace injury or illness. Timely access helps prevent the onset of chronicity.

Timely access to services assists the WCB in helping workers to return to health and gainful employment, while ensuring that workers return to work only when they are medically fit.

Recommendation:

40. The WCB Board of Directors should continue to pursue partnerships with service providers to facilitate timely medical diagnosis, treatment, and rehabilitation.

Return to Work

Many Manitoba employers have well-developed, successful return-to-work programs or procedures which work well in the great majority of instances. In most situations, it is expected that the worker and the pre-accident employer will make their own return-to-work arrangements.

The WCB becomes involved when either the worker or the employer requires financial or technical support to help the worker return to work, or when the worker and employer disagree about whether the modified work placement is appropriate.

Injured or ill workers return to work in 87 percent of cases, most often with their employer. While Canadian human-rights law and many collective agreements establish a duty to accommodate, the Act does not obligate employers to re-employ injured workers.

In some cases, workers lose their jobs upon injury.

In the past, workers compensation authorities across Canada did their best to minimize the impact of workplace injuries and illnesses by facilitating medical treatment and providing benefits.

Today, they explore and employ new health-care delivery methods for injured workers and have placed a far greater emphasis on helping workers to return to work. An important goal of workers compensation is to return them to health and work as expeditiously as possible.

an important goal of workers compensation is to return workers to health and work as expeditiously as possible

We recognize that any right of a worker to return to work with his or her pre-accident employer would have to be subject to certain conditions.

Recommendation:

41. Return-to-work obligations on pre-accident employers should be introduced in the Act, subject to certain conditions, including:

> The worker would have to have been employed full-time or regular part-time by the employer for at least one year prior to the accident.

> Re-employment obligations would be in effect for six months from the date the worker is declared medically fit to perform the essential duties of his or her pre-injury job or other suitable work.

> Only employers who employ 25 or more full-time or regular part-time workers would be obligated to re-employ injured or ill workers.

> Employers would have a duty to accommodate the worker by modifying the work or the workplace, unless such accommodation causes the employer undue hardship.

> When re-employment obligations under the Act conflict with a collective agreement that is binding on an employer and these re-employment obligations are more liberal than those contained in the collective agreement, these re-employment obligations will prevail.

> Notwithstanding a mandated right to re-employment, employers would retain the right to lay-off or terminate workers for bona fide business reasons unrelated to the workplace injury.

In order to monitor workers' return to work, we believe employers, workers, and agents on behalf of injured workers, should notify the WCB when an injured worker has returned to his or her pre-accident employment.

Recommendation:

42. The Act should be amended so that employers and workers are required to notify the WCB when a worker returns to work.

Settlements

Sometimes it is clear to all that an injured worker is very unlikely ever to return to work. A worker's age, medical condition following a workplace injury, education, or skills may all contribute to his or her inability to return to employment.

In these situations, the WCB may decide that vocational rehabilitation is impractical. Instead, the WCB may pay the worker wage-loss benefits until he or she reaches 65 years of age, at which point he or she may be eligible for a WCB retirement annuity.

Occasionally workers ask to convert their future financial benefits into a lump-sum payment. The WCB has not been able to approve these requests because there is no right to commute benefits under the current Act.

We believe that claimants who, for a variety of reasons, are unable to return to employment should be able to request a settlement of their claims.

Both the worker and the WCB would be required to agree to the settlement of a claim, and a settlement would not be a bar to on-going medical aid and related benefits.

Recommendation:

43. The Act should be amended so that, when the WCB determines that a worker is unable to return to work for medical, educational or other reasons, a worker may commute any future financial benefits to a lump-sum settlement.

Penalties and Fines

Workers, employers, and health-care providers have various responsibilities under workers compensation. It is important that all stakeholders fulfill their obligations under the legislation to ensure that the system works smoothly and efficiently.

fines and penalties are important tools in enforcing compliance with the Act

Various sections of the Act allow the courts to charge a fine when an individual fails to comply with the legislation's requirements. Prosecution requires laying charges through the Attorney General.

The maximum fine under the Act is $5,000.00 for an employer and $1,000.00 for a worker. In certain circumstances, imprisonment up to three months may also be imposed instead of, or in addition to, the fine.

In a fewer number of instances, the Act also allows the WCB to levy an administrative monetary penalty. Administrative penalties can be levied by the WCB without court proceedings

Fines and penalties are spread throughout the Act and should be consolidated into one section of the Act.

Employers and workers who fail to comply with various sections of the Act are subject to penalties. In addition to fines, other remedies, such as the denial or suspension of benefits, are built into the Act to enable the WCB to resolve instances of program abuse by workers.

Fines and penalties are important tools in enforcing compliance with the Act, and they must be perceived as fair, contemporary, and in keeping with the offense. Fine and penalty levels should be adjusted to match increases to the annual consumer price index from 1992 to 2004 to reflect the impact of inflation, and be indexed annually.

The WCB has four years to prosecute only in instances when a worker or employer knowingly makes a false statement to the WCB. For all other infractions, prosecutions under the Act must occur within the six-month time limit provided by *The Summary Convictions Act*. Because the WCB may only learn of a potential infraction after six months have elapsed, the six-month time limit for most prosecutions contributes to making it difficult to obtain convictions.

We have proposed the establishment of new provisions, such as a worker's re-employment with his or her accident employer. Additional fines and penalties should be established to enforce such sections.

Recommendations:

44. The fine and penalty sections of the Act should be consolidated into one section.

45. The Act should be amended so that fine and penalty levels are adjusted to match increases to the annual consumer price index from 1992 to 2004, and are then indexed by the consumer price index annually.

46. The Act should be amended so that time limits for prosecutions which are currently set at six months are raised to two years.

47. Fines and penalties for the enforcement of proposed amendments should be established in the Act, consistent with the levels proposed in Recommendation 45 and indexed annually by the consumer price index.

Claims Suppression

Workers compensation is compulsory for covered industries. Workers and employers in covered industries cannot contract out of the Act. The Act states that workers cannot agree with their employers to waive or forego WCB benefit entitlement and any such agreement is void. Other than this statement, however, the Act does not contain sanctions for such actions. It is essential that stakeholders understand their rights and responsibilities in these matters.

it is essential that stakeholders understand their rights and responsibilities

The Act creates an offense for an employer who attempts to compel or induce workers not to apply for compensation. This provision only deals with situations that happen before a worker files a claim. Many complaints relate to incidents that occur *after* a worker has applied for benefits, where pressure is exerted on a worker to withdraw the claim.

We are of the view that the Act should contain a provision to prevent anyone from taking discriminatory action against a worker who reports suppression of or interference with a claim to the WCB.

Recommendations:

48. The WCB Board of Directors should establish an ongoing awareness and educational campaign for both workers and employers so that all may know and understand their claims reporting responsibilities and rights.

49. The Act should be amended so that the definition of claims suppression is broadened to include any action taken to prevent the filing of a claim or to interfere with a claim once filed.

50. An administrative penalty, consistent with the levels proposed in Recommendation 45, should be established for any person who attempts to suppress claims or to interfere with a claim once filed.

51. The Act should be amended so that no employer, worker, union or person acting on behalf of an employer, union or worker shall take or threaten discriminatory action against a worker who reports alleged claims suppression or who reports interference with a claim to the WCB.

Openness and Fairness

The WCB of Manitoba is an administrative tribunal, an independent agency of the Government of Manitoba with the authority to administer duties set out in legislation. Administrative tribunals have a duty to act fairly and impartially and in a non-adversarial manner when making decisions. The duty to act fairly and openly is referred to as natural justice. Natural justice underlies every principle of workers compensation.

natural justice underlies every principle of workers compensation

Fair Treatment

During the public hearings, we heard many positive comments from workers and their families about WCB staff and the service they provided. Employers were also positive about service to them.

We are confident that WCB staff will continue to meet the expectations of workers and employers who are covered by workers compensation. WCB staff will:

> Help workers establish a claim after a workplace accident;

> Make decisions on claims in a timely fashion;

> Ensure that injured workers receive benefits promptly and that workers understand how those benefits are calculated;

> Provide service that is respectful, responsive, efficient, and effective;

> Ensure that workers and employers receive information that is open, clear, accurate, and confidential;

> Inform injured workers of all services and benefits that are available to them;

> Ensure that employers understand how their assessment rates are calculated;

> Provide aid and support to employers and workers to help injured workers return to work in a timely and safe manner; and

> Provide assistance in establishing workplace safety and injury prevention programs.

Recommendation:

52. The WCB Board of Directors should widely distribute these guidelines for fair treatment and take action to give them effect.

The Canadian Charter of Rights and Freedoms

The Supreme Court of Canada ruled in 2003 that administrative tribunals, such as workers compensation authorities and appeal tribunals, have the ability to decide issues that arise under *The Canadian Charter of Rights and Freedoms*, including the authority to determine that certain legislation and regulations are unconstitutional.

The Court ruled that administrative tribunals that have the right to decide questions of law also have the right to decide the constitutional validity of that law. An administrative tribunal will not have the right to decide the constitutional validity of the law only when it can be shown that the legislature clearly intended to exclude this right from its authority.

We do not believe that the WCB or the Appeal Commission should be in a position to decide whether the Act is consistent with *The Canadian Charter of Rights and Freedoms*. Questions of constitutionality are best left to the Government of Manitoba and to the courts to decide.

Recommendation:

53. The Act should be amended to clarify that neither the WCB nor the Appeal Commission will determine the constitutionality of the Act.

Limits on Further Claims

to enhance the principles of natural justice, we believe the mandate of the Office should be broadened

Workers have the right to file a claim if they believe they have suffered a workplace injury or illness. Operating under an inquiry model, the WCB must then investigate the claim and adjudicate it on its individual merits.

The current Act allows the WCB to deny or limit a claim under certain circumstances. On occasion, a worker has an accident and is advised by the WCB not to return to the same job because doing so would likely cause further injury or illness. If that worker returns to the same job, despite the WCB's warning, and has a second accident, the WCB may deny or limit this claim.

Recommendation:

54. The Act should be amended so that a worker has a clear right to file a claim in a situation when a previous injury of the same type has occurred, and to have that claim adjudicated on its merits.

Worker and Employer Advisors

While the WCB funds 100 percent of the costs of the Worker Advisor Office, the Office is accountable to the Department of Labour and Immigration.

The Worker Advisor Office provides free advocacy services for injured workers and their dependents. Worker advisors are public servants who are specially trained in workers compensation matters. Worker advisors assist workers with claims matters both at the WCB and at the Appeal Commission.

To enhance the principles of natural justice, we believe the mandate of the Office should be broadened to include offering advisory services to employers, and that its name be changed to reflect this.

Recommendation:

55. The Act should be amended to broaden the mandate of the Worker Advisor Office to include offering advisory services to all WCB clients and to change its name to the WCB Advisor Office to reflect its new mandate.

Also to enhance natural justice, clients of the Office should have full access to their own files, just as they have the right to review their WCB files.

Recommendation:

56. The Act should be amended to grant workers and employers access to any files created by a worker or employer advisor regarding them.

The WCB Advisor Office and the Employment Standards Branch of the Department of Labour and Immigration are currently housed in a joint office. The WCB Advisor Office should not be affiliated with a government department, and should be accountable to the WCB.

Recommendation:

57. The Act should be amended so that the WCB Advisor Office is accountable to the WCB Board of Directors and receive its budget from the WCB, but that it operate and be housed independently of the WCB.

Client Medical Exams

If the WCB requests it, workers are required to undergo a medical examination. A worker's right to compensation can be suspended when he or she fails to submit to the examination or obstructs it.

injured workers should bring whomever they feel will provide the greatest support to an examination

Family members are allowed to accompany workers to their medical examination. WCB policy has discouraged injured workers from bringing lawyers or other advocates to examinations on the basis that this may contribute to an adversarial environment during the examination.

The principles of natural justice will be better served by allowing injured workers to bring whomever they feel will provide the greatest support. We agree that any person who accompanies an injured worker to a medical examination must come as a support, not an advocate.

Recommendation:

58. WCB policy should be amended to grant workers the right to bring any person of their choosing to a medical examination for the purpose of support, not advocacy.

Medical Review Panels

The WCB or the Appeal Commission may convene a Medical Review Panel (MRP) when either body requires an expert independent medical opinion. A worker is entitled to an MRP if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor that affects the worker's entitlement to compensation.

Although a worker may request an MRP, an employer has no such right when he or she believes an independent review of a medical matter would result in a different decision on a claim. Under an inquiry model, all parties to a claim are entitled to a full investigation of the facts.

Recommendation:

59. The Act should be amended to grant employers the right to request an MRP.

Although required to attend an MRP, workers have no right to pose questions. We believe MRPs should follow a client-centred approach that fosters information sharing, as the better informed a claimant is, the better his or her recovery will be. Employers should also be able to pose questions.

Although existing practices allow and encourage questions, we believe that a WCB policy be adopted to recognize the practice.

Recommendation:

60. WCB policy should be amended to grant workers and employers the right to pose questions at an MRP.

The Appeal Process

Workers, their dependents, and employers all have the right to appeal WCB decisions. We have identified three areas where the process might be enhanced to promote natural justice.

Under the inquiry model, the WCB has a responsibility to collect and weigh evidence bearing on a claim. With respect to medical evidence, the WCB initiates the collection of evidence by asking health-care providers for medical reports.

Occasionally, workers who have asked for a reconsideration of their claim will attend a physician on their own initiative in an effort to find medical evidence in support of their claim.

Often, the WCB does not compensate claimants for the costs they incur to obtain these reports because the Act only requires the WCB to pay for reports that it has requested and because additional reports may not contain new medical information.

In fairness, we believe the WCB should pay for reports requested by claimants during a reconsideration when those reports contain new and relevant medical information, or they clarify a diagnosis.

Recommendation:

61. WCB policy should be amended so that medical reports obtained by claimants during a reconsideration and which add new or relevant information, or information that clarifies a diagnosis, be paid for by the WCB, regardless of the outcome of the reconsideration.

The current Act contains a provision allowing the Appeal Commission to hold an appellant liable for costs up to $250.00 if it determines that an appeal is frivolous. The intent of this provision is to deter workers and employers from filing appeals that have no real merit.

We recognize that Appeal Commissioners, employers, and workers may hold different views regarding what constitutes a frivolous claim.

This section may deter someone from appealing a claim. Under natural justice, workers and employers have a right to be heard. The possibility that one might be penalized for filing a frivolous appeal must not be allowed to deny a person this right.

Recommendation:

62. The section on "frivolous appeals" should be removed from the Act.

When the Appeal Commission reaches a decision on a claim, it is important that that decision be communicated clearly and correctly to all involved parties and that it be implemented properly.

We have noted that the current Act prevents the Appeal Commission from correcting clerical and typographic errors in its decisions. At times, such simple errors have a detrimental impact on the course of claims. This oversight in the current Act must be addressed.

Recommendation:

63. The Act should be amended to allow the Appeal Commission to correct clerical and typographic errors in its decisions.

The Fair Practices Office

The WCB established the Fair Practices Office in 1989 in the tradition of the ombudsman to address issues of fairness and natural justice that are identified by injured workers and employers.

The Office has a mandate to investigate complaints and to make recommendations for correction to the Board of Directors when it determines that an action or a decision of the WCB was wrong or unreasonable.

Many stakeholders are not aware of the Fair Practices Office. This situation should be addressed in legislation, although the duties and mandate of the Office should continue to be set by the Board of Directors.

Recommendation:

64. The Fair Practices Office should be established within the Act, but its duties and mandate should continue to be set by the WCB Board of Directors.

workers compensation ... provides medical aid and a range of vocational rehabilitation services.

Periodic Review of The Workers Compensation Act

Although the basic principles of workers compensation have remained relatively unchanged over the past 90 years, the compensation program has evolved considerably. Workers compensation was essentially a wage-replacement system when it was first established. Today, it also provides medical aid and a range of vocational rehabilitation services.

Owing to the changing nature of the compensation environment, it is important that the Government periodically review the Act to ensure that it continues to reflect the needs of stakeholders. Periodic review will also help ensure that the principles of natural justice continue to be upheld.

Recommendation:

65. The Act should be amended to require the Government of Manitoba to conduct a public review of the Act every 10 years.

Understanding Workers Compensation

In workers compensation, as in any other public service program, there is a fundamental principle that people are entitled to know their rights and obligations under the Act and how and whether it applies to them.

The Act was first passed in 1916 and has been amended and revised on several occasions since that time. The entire Act has never been completely rewritten.

During the public hearings into the Act, it became clear that many groups and individuals have found the Act's format to be confusing and its content difficult to read and understand.

everyone will benefit from an Act that is clear, readable and comprehensible

Understanding the Act

We would like to see the Act streamlined, reorganized and rewritten in plain language. Everyone—workers, employers, advocates, and the WCB—will benefit from an Act that is clear, readable and comprehensible.

Recommendation:

66. The Act should be written in plain, consistent language and reorganized in a logical, sequential, and grouped manner.

Definitions

To exercise their rights and to fulfill their obligations, those who read the Act must understand what it means. Writing the Act in plain language will serve this end. It would also be very useful if definitions within the Act were revised for clarity, or updated. For example:

> *Mitigation:* this definition needs clarification so that injured workers understand that mitigation means taking reasonable steps to reduce or avoid losses resulting from injury.

> *Wage-Loss Benefits:* WCB policies on average earnings, net average earnings and post-accident earnings should be simplified to set out clearly inclusions and exclusions from income.

> *Agency of Government:* the definition of agency of government should be amended to delete the references to ownership of shares. An entity is an agent of government if the Crown controls the election of the majority of the board of directors directly or indirectly, without the requirement for share ownership.

> *Stock for Bulk Sales:* the current definition of "stock" is based on the antiquated and now repealed Bulk Sales Act and should be expanded to include services, equipment or other tangible or intangible property.

Recommendation:

67. Definitions throughout the Act should be updated and clarified where necessary.

Transition and Mediation Services

When a worker is injured or becomes ill on the job, he or she begins a journey through the workers compensation process. From filing a claim to returning to health and work, a worker may be required to

make significant transitions. For the vast majority, their claim ends when they return to work.

When workers' benefits are concluding, WCB staff may refer them to community resources, agencies, helping professionals or advocates who can help them adjust to their changed situation, and thereby reduce the psychological, emotional, and financial impact when WCB benefits and services end.

WCB staff usually offer these transition services when compensation benefits and services are ending, but some referrals, such as for crisis intervention, are made much earlier, while compensation benefits and services are ongoing.

It is essential that the WCB take a proactive approach to the provision of transition services to injured workers and their families.

it is essential that the WCB take a proactive approach to the provision of transition services.

Recommendation:

68. The Board of Directors should ensure that procedures are developed to strengthen the ability of WCB staff to provide timely and effective transition services to workers and their families.

Injured and ill workers may receive a range of benefits and services, and, sometimes, differences of opinion arise between claimants and the WCB regarding on-going entitlement. Such differences of opinion can become entrenched early in the life of a claim, souring the relationship between a worker and the WCB and potentially hindering the recovery of the worker. Differences of opinion also arise between employers and the WCB.

It would be useful in these circumstances if the WCB could offer clients a mediation service. Mediators could help clients and the WCB

reach a consensus on issues of concern and bring a client-centred approach to help injured workers make successful transitions through the workers compensation system.

Mediation could be used to resolve many issues before they become entrenched and before stakeholders feel the need to have them decided by the Review Office or Appeal Commission. By resolving issues early, mediation offers the potential of reducing claim duration.

Mediation should be provided at the discretion of the Fair Practices Office or the WCB Advisor Office and be agreed to by both WCB and the worker or employer. It should provide non-binding facilitation to resolve issues or determine issues. Policy governing mediation and a list of mediators would be determined by the Board of Directors.

Recommendation:

69. The Board of Directors should consider mediation as one of several aids in resolving disputes between the WCB and its clients.

Administering the Workers Compensation Program

The WCB provides timely service to enable claimants to return to health and work. It has an obligation to fulfill this mandate in a financially prudent manner.

We have developed a series of recommendations that will enhance the WCB's ability to conduct its business, resolve issues that have been identified and require clarification, and enable the WCB to provide its services in a more effective and efficient manner.

this governance model has worked extremely well

The Governance Model

The current governance model of the Board of Directors was introduced in 1990. Members are appointed by the Government and consist of a chairperson, three representatives of workers, three representatives of employers, three representatives of the public interest and the WCB's Chief Executive Officer, who is a non-voting member.

Members of the Board are appointed for a fixed term not exceeding five years, and may be re-appointed.

This governance model has worked extremely well and served as a model for other workers compensation authorities in Canada.

However, we believe clarity is required regarding voting procedures and that by continually refreshing its membership, new and creative ideas can be assured at the Board.

Recommendations:

70. The Act should be amended to grant the Chairperson of the Board of Directors a vote only in the case of a tie.

71. The Act should be amended so that members of the Board of Directors are appointed for one- to four-year terms and that starting times for these appointments are staggered.

The current Act provides for the creation of a Policy Committee of the Board of Directors. Other sub-committees of the Board of Directors, including Finance, Service, and Audit committees exist, but are not specifically referred to in the Act.

the role of the Board of Directors is to provide vision, accountability, and to assure organizational performance

An amendment should recognize a separate and distinct Audit Committee as an important tool of accountability.

Recommendation:

72. The Act should be amended to recognize a separate and distinct Audit Committee of the Board of Directors.

The role of the Board of Directors is to provide vision, accountability, and to assure organizational performance. To this end, the Board should have access to appropriate and sufficient independent information concerning how the WCB is administered. This function is served if value-for-money audits are conducted periodically.

Recommendation:

73. The Act should be amended to require the Government of Manitoba to appoint an independent auditor to conduct a value-for-money audit of the WCB every five years.

WCB Investments

The WCB Investment Committee is a statutory body established by the Act. It consists of a Chairperson, who is also the Chairperson of the WCB Board of Directors, or designate, the Deputy Minister of Finance or designate and a person representing employers, who is appointed by the Government. In its normal operations, the Investment Committee hires and uses investment advisors considered necessary to carry out its duties and functions.

The Investment Committee reviews WCB investments and provides written direction for the investment portfolio.

Despite the great responsibility entrusted to the Investment Committee, the current Act does not indicate to whom it is accountable.

Recommendations:

74. The Act should be amended to make the Investment Committee accountable to the WCB Board of Directors.

75. The WCB Board of Directors should set investment policy.

We believe the tripartite governance model used by the WCB should be extended to the Investment Committee. Individuals would continue to be appointed to the Investment Committee on the basis of their investment knowledge and skills.

Recommendation:

76. The Act should be amended so that the Investment Committee will consist of the WCB Chairperson or his or her designate, the Deputy Minister of Finance, or his or her designate, and three other people, one representing employers, one representing workers and the other the public interest, the appointments to be made by the Lieutenant Governor in Council on the basis of their investment knowledge and skills.

Corporate Powers of the WCB

The WCB's corporate powers and authority are a throwback to a time when the board invested only in government bonds. Today, the WCB has a variety of assets. The Act should be modernized to reflect the current-day business activities of the WCB.

The Act should grant the WCB full corporate capacity and authority to borrow money, acquire property, and invest in accordance with modern commercial practices. This capacity would bring the WCB into line with statutory corporations and other corporations under *The Corporations Act*.

Recommendation:

77. The Act should be amended so that the WCB's corporate powers and authority are stated in such a way that the WCB has the powers necessary to carry out its mandate.

Agreements with Other Jurisdictions

The current Act allows the WCB to enter into agreements with the Government of Canada or the workers compensation authority in another Canadian jurisdiction. It would be useful to trans-national employers, such as trucking companies, and to workers, if the WCB

were permitted to enter into agreements with workers compensation authorities and private insurers both inside and outside Canada.

Occasionally, injured workers have the option of choosing to file for compensation in Manitoba or in another jurisdiction. This might occur, for example, in Flin Flon, where the Manitoba-Saskatchewan border cuts through the town. Deciding with which workers compensation board to file a claim can be an onerous decision, especially in fatal cases.

In such instances, it would be beneficial for injured workers or their families if inter-jurisdictional agreements allowed them to receive benefits in one jurisdiction and later elect compensation in another. Benefits paid by the Manitoba WCB could then be recovered from the other jurisdiction.

the Act should be modernized to reflect the current-day business activities of the WCB

Recommendations:

78. The Act should be amended to allow the WCB to enter inter-jurisdictional agreements with other workers compensation authorities and other insurers inside and outside Canada.

79. The Act should be amended to allow claimants to receive temporary compensation in one jurisdiction and later elect compensation in another.

Third-Party Actions outside Manitoba

Immunity from lawsuit only applies to employers and workers covered by workers compensation. For non-covered or "third" parties, the potential to be sued remains. In Manitoba, a worker or his or her dependents may elect to claim workers compensation or take an action against a third party.

If the worker chooses to claim compensation from the WCB, the WCB may then pursue legal action on behalf of the worker, dependents, and the WCB.

The Act does not make it clear that the right to conduct third-party actions applies for accidents that occur outside Manitoba. On this point, we believe the Act needs clarification.

Recommendation:

80. The Act should be amended to confirm the WCB's right to conduct third-party actions for accidents that occur outside Manitoba.

Leaves of Absence during Elections

We recognize the importance of public service, including candidacy for political office. Civil servants under *The Civil Service Act* are entitled to leaves of absence to seek political office. Our Act could be amended to incorporate similar provisions as those in *The Civil Service Act.*

Recommendation:

81. The WCB Act should be amended to allow WCB employees to run as candidates for public office and have the same rights to do so as civil servants.

Federal Privacy Laws

Manitobans are concerned about the privacy of their personal information. We appreciate that protection of privacy is of paramount importance. The application of fair information practices requires a fine balance between protection of privacy and legitimate access to and use of the information.

We were asked to consider amendments to conform to the guidelines

under the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA contains 10 principles of fair information practice, including accountability for collection, use or disclosure, and security of personal information. PIPEDA does not apply to provincial agencies such as the WCB.

However, the PIPEDA guidelines are also found in *The Personal Health Information Act* (PHIA) for personal health information and in *The Freedom of Information and Protection of Privacy Act* (FIPPA) for personal information. The WCB is bound by PHIA, FIPPA and *The Workers Compensation Act*, which have detailed provisions about the collection, use, and disclosure of confidential information.

These provisions balance the collection and use of information necessary for the workers compensation system with the protection of the privacy and security of the information.

Health-Care Providers

The current Act lists specific health-care providers who must assist workers in connection with compensation claims and provide reports to the WCB. These include doctors, hospitals, nurses, dentists, psychologists, and osteopaths. This list does not recognize many health-care professionals who also assist workers in their recovery.

The Act should be amended to define attending health-care professionals in a more generic manner. A more generic listing would be consistent with WCB policy, which recognizes all health-care providers who belong to organizations that have a formal certification and licensing or registration process.

Outdated references to obsolete specialties or positions should be removed from the Act.

Specific health-care providers can be defined by regulation, which would be updated as new specialities arise and others become obsolete.

Such a regulation would list medical doctors, chiropractors, physiotherapists, dentists, psychiatrists, and others. It could also list other providers of medical aid such as massage therapists, speech therapists, occupational therapists, and psychologists.

Recognizing various health-care providers by regulation would clearly set out the WCB's authority to set fees and the providers' reporting duties.

Recommendations:

82. The Act should be amended to define attending health-care providers in a more generic manner and providers should be more specifically defined in regulation.

83. The reference in the Act to "osteopaths" should be deleted, as this specialty is obsolete.

84. The reference in the Act to a "medical referee" should be deleted, as this provision was made obsolete by the introduction of Medical Review Panels.

Currently, "physician" is defined in the Act as a duly qualified medical practitioner who regularly and lawfully practices in Manitoba. The treating physician of an injured worker who has moved out of province is not recognized by law.

While it would be impractical and prohibitively expensive to allow physicians from across Canada to sit on Medical Review Panels, we believe the Act must recognize workers' treating physicians.

Recommendation:

85. The Act should be amended to expand the definition of a treating physician to recognize a duly qualified practitioner who regularly and lawfully practices in Canada.

No Action for Damages against the Board

The Act provides that no action for damages may be brought against a member of the Board of Directors, a person employed by the WCB, an appeal commissioner, or any worker advisor in response to any actions they take in good faith in carrying out their duties. This protection has not been extended to others, such as Investment Committee members, Medical Review Panels, and other WCB agents who are not employees, such as medical advisors.

In Manitoba, this type of protection is commonly provided to administrative tribunals and the agents who help them carry out their duties. An amendment to extend the protection provided to the WCB and its agents would bring the WCB in line with other Manitoba tribunals, such as Manitoba Public Insurance, professional regulatory bodies, and the Ombudsman.

Recommendation:

86. The Act should be amended to protect the WCB and its agents from legal actions or proceedings.

Board and Employees in Legal Proceedings

The WCB operates on an inquiry model and its files are for the use and purposes of the workers compensation program. Parties often seek access to WCB information for purposes unrelated to workers compensation and these proceedings can be adversarial in nature. The subpoena of WCB personnel or records in these situations should not place the WCB in a position where it appears to be taking sides. The WCB should not be required to produce its records in any legal proceeding.

The Act provides that WCB employees, members of the Board of Directors, Appeal Commissioners, and worker advisors are not required to give testimony in a civil lawsuit to which the WCB is not a party. This immunity from subpoena relates to civil court actions but not necessarily to other proceedings such as arbitrations. This immunity has also not been extended to others, such as Investment Committee members, Medical Review Panels, and medical advisors.

In the case of other Manitoba administrative tribunals, the immunity to subpoena commonly extends both to proceedings and to agents who help the agencies carry out their functions. An amendment to extend the immunity from subpoena to all proceedings and to WCB agents would bring the WCB in line with other Manitoba agencies, such as Manitoba Public Insurance.

Recommendation:

87. The Act should be amended so that the WCB, its agents and records are not required to attend and participate in any legal proceeding where the WCB is not a party.

Experience Rating for New Employers

When setting assessment rates for employers, the WCB examines employers' claims experience. A new employer, of course, has no claims experience. By administrative practice, the WCB will establish a rate for the new employer which is the average rate of the risk category to which the employer is assigned. In subsequent years, a new employer's premiums will be raised or lowered, depending on its claims experience.

The current Act might be interpreted to suggest that experience rating only applies to employers that already have some experience. An amendment should clarify that the WCB may allocate experience to new employers.

Recommendation:

88. The Act should be amended to state that the WCB may allocate experience to new employers.

Setting the Average Cost of Fatal Claims

The assessment rate model includes fatality-related provisions, including the setting of an average cost for a fatal injury instead of assigning the actual cost to an employer's experience.

If an average cost is not used, the cost of a fatality could vary from a few thousand dollars to a million or more depending upon the worker's status (that is, whether the worker was married, single, his or her age, whether he or she had any dependents, etc.). The impact of a fatal claim on one employer compared to another would vary widely.

WCB legislation allows for the setting of an average cost of a fatality based on the average cost of fatal accident claims in the previous year for rate-setting purposes. The employer does not pay the average cost as a benefit to survivors. The average cost is simply the cost assigned to an employer's experience for the purposes of calculating the next year's rate.

The average amount, following actuarial advice and consultation with stakeholders, has been set at $250,000.00.

The low number of fatal accidents that occur each year, some 20 to 25, does not lend itself to the creation of a meaningful value. We are of the view that the Act should be amended to give discretion to the WCB to determine the costs of fatal-accident claims for rate-setting purposes. These costs could be any reasonable amount and not necessarily tied to average costs in the previous year.

Recommendation:

89. The Act should be amended so that the deemed cost of fatal claims for rate-setting purposes may be any reasonable amount based on actuarial principles and that is approved by the Board of Directors.

New Technologies

The WCB and Appeal Commission have broad powers to gather evidence and determine the nature and sufficiency of the evidence in each case.

The evidence gathering process is less formal than in the courts and the strict rules of evidence are not applied, as that would limit the evidence available for consideration. For example, the WCB permits fax or telephone reporting. It also considers health-care providers' reports without formal authentication and qualification of experts as required in the court system.

The Act only recognizes an injury report if it is received by mail. The WCB has encouraged medical providers to fax medical reports, employers to use web-based reporting and workers to report accidents by telephone, and these practices must be allowed under the Act.

Recommendation:

90. The reporting sections of the Act should be modernized to permit the use of new technologies, including electronic media and the Internet.

Employer Assessment Issues

Employers are required to provide periodical payroll estimates to the WCB. Many employers, particularly in the construction industry, cannot estimate their future payroll because they cannot reasonably predict future contracts.

At the end of the year, employers are required to provide a comparison of their reported and actual payroll. If they have underreported, they may be exposed to a fine.

An amendment to permit an assessment model based on actual payroll, paid in arrears, would considerably improve service to some employers. Several sections of the Act would require amendment to accommodate this model.

Recommendation:

91. The Act should be amended to permit employers to pay assessments based on actual payroll in arrears.

The Act currently permits transfer of occupational disease costs among employers. It should be amended to allow cost allocation among employers for other non-specific injuries such as repetitive strains.

Under this proposed amendment, an employer would not bear the total costs of a repetitive strain injury when the worker's injury was not solely the result of exposure to repetitive work with the one employer.

Recommendation:

92. The Act should be amended to allow the WCB to transfer the costs of non-specific injuries from the employer to the collective pool of employers.

The current legislation allows the WCB to establish a fund to meet part of the costs of claims that, in the opinion of the WCB, result from pre-existing conditions, occupational diseases, concurrent employment, wage increases, or other circumstances that the WCB determines would unfairly burden an industry.

Employers may access this fund through the cost relief/cost transfer policy. In some cases, employers have applied for cost relief for claims that occurred longer than five years ago. Only the last five years of on-going claims costs are used to set an employer's rate.

Recommendation:

93. WCB policy should be amended to limit retroactive rate calculations to the previous five years.

Appeal Commission

The Appeal Commission was created in 1990 as a final level of appeal. Its members are appointed by the Government and consist of representatives of workers, employers and the public interest.

Issues are decided by Appeal Panels, which consist of a presiding officer who is a representative of the public interest, and one representative each of workers and employers. Panel members are selected for each case from a list of available full-time and part-time commissioners.

The Appeal Commission operates independently and is accountable to the Minister Responsible for Workers Compensation. It is bound by the Act, accompanying regulations, and WCB policy. It is not bound by internal WCB procedures or guidelines.

Our recommendations regarding the Appeal Commission are intended to increase its public accountability and enhance its administration.

Recommendations:

94. **The Act should be amended to require the Appeal Commission to prepare and publish an annual report to the Minister.**

95. **The Act should be amended to allow the Chief Appeal Commissioner to determine whether an appeal commissioner has an actual or apparent conflict of interest, and to delegate this role to another presiding officer for determination if the matter involves the Chief Appeal Commissioner.**

96. **The Act should be amended so that Appeal Commissioners are not appointed to the WCB Board of Directors.**

97. **The Act should be amended so that appointments to the Appeal Commission are for fixed terms, but so that Appeal Commissioners whose terms have expired may optionally be allowed to continue working on cases that are in progress.**

Medical Review Panels

Under the current Act, when particular consultants or other interested parties are required to attend a Medical Review Panel, or further medical tests must be ordered, these activities must be done by the MRP itself.

In practice, these arrangements often must be made before the first meeting of the Panel, and are made by the Chairperson on the Panel's behalf. We recognize that this administrative practice should be endorsed.

Recommendation:

98. The Act should be amended to allow the Chairperson of an MRP, on behalf of the MRP, to invite consultants to attend and order further medical testing.

Corporate Name

An organization's name says a great deal about it. To speak of the "Workers Compensation Board" is to accept symbolically that there will continue to be victims of accidents in need of compensation, and that the WCB's focus is primarily compensation.

Manitobans are beginning to understand that a safe workplace is their right. They expect safe work processes and workplaces to be the norm. This new attitude could be reflected in the name of the corporation. Stakeholders should be consulted on the question of providing a new name for the WCB.

Recommendation:

99. The WCB Board of Directors should consult stakeholders on whether to rename the WCB to reflect its mandate for prevention.

Costs – Tracking and Accountability

We believe our recommendations will improve the WCB by making it more responsive, equitable, and fair towards its stakeholders. Our recommendations have broken some new ground.

In some areas where we might have gone further, our decision-making process was tempered by the reality of the Manitoba economy and its ability to absorb additional costs.

An analysis of the potential cost implications of each of our recommendations is attached to this report. Prepared by professionals, this analysis attempts to identify and estimate cost ramifications using WCB data and well-established costing methodologies. Its primary assumption is that historical patterns may be used as indicators of future patterns. This analysis has been reviewed and endorsed by the Chief Executive Officer of the WCB.

We recommend that the WCB Board of Directors consult with its stakeholders to develop a process to track the costs of our recommendations over time.

Recommendation:

100. The WCB Board of Directors should establish, in consultation with its stakeholders, a clear and transparent process to track the cost implications of these recommendations.

Afterword

We have listened carefully to stakeholders from across Manitoba and are thankful for their insight. The result of this examination is 100 recommendations to ensure the relevancy of workers compensation in the twenty-first century.

Including prevention within the WCB's mandate is singularly the most progressive recommendation in this report. Preventing injuries and illnesses in the workplace eliminates pain and suffering to workers and their families, disruption to workers' incomes; potential interference with workers' careers; and life-altering changes to workers' lives. Prevention is also the best strategy for reducing WCB benefit, treatment, and rehabilitation costs.

A basic assumption of workers compensation is that everything possible will be done to enable workers who experience a workplace injury or illness to return to work. Our recommendations complement this process by recognizing the principle that no one should lose his or her job because he or she was injured at work.

The Review Committee believes the protection provided by workers compensation should be extended to larger number of workers and employers, gradually and in consultation. Extended coverage offers secure compensation to workers when they need it and reduces the overall cost of workplace accident and liability insurance to all covered employers.

Our recommendations ensure that, to a far greater degree than previously, workers who experience a workplace injury or illness will not suffer a loss of pay as a consequence. Employers will pay injured workers for the day of accident. Workers will not suffer any interruption to their income because employers will pay, and be reimbursed for, one regular pay period less the day of accident. Workers' wage-loss benefits will no longer be subject to an insurable earnings cap.

Benefits will be enhanced in other ways. Wage-loss benefit levels will be maintained at 90 percent of net loss of earnings for the duration of a worker's claim. Permanent impairment awards will be increased, especially at lower degrees of impairment. Impairment awards and survivor benefits will no longer be subject to arbitrary reductions based on age.

At the same time, our recommendations recognize the need for sound financial management of the program. So that the Government of Manitoba, the WCB, and its stakeholders understand and can quantify the value added by the program, we have recommended that the workers compensation program be subject to a value-for-money audit every five years.

We are also recommending that the Act be reviewed every 10 years to ensure that it is always in step with the needs of employers, workers, and their families.

While we recognize that it will take some time to enact and implement these recommendations, we are certain that they will, on behalf of those who came and made presentations to us and to all stakeholders of the WCB program, ensure that workers compensation will continue to work for Manitoba as we move further into the twenty-first century.

Summary of Recommendations

1. The principles of workers compensation should guide the delivery and administration of workers compensation in Manitoba into the twenty-first century.

2. The Act should be amended to make the critical role of prevention the prime responsibility of the WCB, while enforcement of The Workplace Safety and Health Act and its regulations should remain with the WSHD.

3. The Government of Manitoba should reorganize the WSHD to be a highly effective enforcement agency.

4. The Act should be amended so that the costs of enforcement as currently undertaken by the WSHD, be borne by the general revenues of the Province of Manitoba.

5. The WCB, through its rate structure, should provide incentives to employers that have implemented successful prevention and return-to-work initiatives, including those developed through accreditation programs.

6. WCB coverage of workplaces should be extended gradually over a three- to five-year period beginning with the inclusion of higher-risk workplaces that are not already covered.

7. The extension of coverage should only occur after employers and workers in those industries where extension might occur have had a full and free opportunity for consultation and discussion. This dialogue should be initiated by the WCB.

8. A vigorous program should be developed by the WCB to encourage low-risk workplaces to opt into WCB coverage.

9. All aspects of coverage should be reviewed in five years.

10. The Act should be amended so that individuals engaged in work-experience programs are considered to be workers.

11. The Act should be amended so that resident family members of business owners are considered to be workers.

12. The Act should be amended to permit non-profit and charitable organizations to purchase optional coverage for their volunteers based on risk and prevention models for volunteers, the process to be determined by regulation by the WCB.

13. This extension of coverage should be brought into effect after employers and volunteers in these organizations have had a full and free opportunity for consultation and discussion. This dialogue should be initiated by the WCB.

14. The Act should be amended so that directors of corporate employers are considered to be employers for purposes of the immunity to suit provisions of the Act.

15. The WCB Board of Directors should review and update the definition of employers' premises and related policies to ensure that they meet the challenge of changing workplaces.

16. Dominant cause should remain the fundamental test for adjudicating occupational disease claims.

17. The WCB should continue to monitor the evolving science to determine when and if to broaden the coverage of occupational diseases.

18. The Act should be amended, on the basis of scientific evidence, to add primary-site cancers of the colon and ureter to the sections regarding full-time firefighters.

19. The results of the study currently being undertaken among volunteer firefighters in Manitoba should guide whether to expand the sections of the Act regarding firefighters to volunteer and part-time firefighters.

20. The Act should be amended so that employers pay a worker's regular earnings for the day of the accident.

21. The Act should be amended so that a worker's CPP contributions are not deducted in determining net average earnings.

22. The Act should be amended so that wage-loss benefits are calculated with no reduction to 80 percent after two years.

23. A worker's wage-loss benefits, assuming a worker has no post-accident earnings, should be calculated by deducting probable income tax and Employment Insurance contributions from gross earnings and multiplying the remainder by 90 percent.

24. The Act should be amended by removing the limit on insurable income.

25. The Act should be amended so that a worker's wage-loss benefits will not be less than 100 percent of the Manitoba minimum wage at the time of accident.

26. The Act should be amended so that employers pay workers who experience a workplace injury or illness their regular net income for up to one full pay period and then the employer be reimbursed by the WCB for all but the day of accident.

27. The Act should be amended so that workers who are 61 years of age or older will be eligible to receive wage-loss benefits until they are fit to return to work, or for four years, whichever occurs sooner.

28. The issue of Post-Retirement Supplements should be returned to the WCB Board of Directors for their consideration, after consultation with stakeholders.

29. The WCB Board of Directors should review their policies relating to post-accident earnings to ensure that overtime earnings are not deducted from wage-loss benefits.

30. The Act should be amended to allow employers to top-up the difference between wage-loss benefits and a workers' regular take-home pay.

31. The Act should be amended to allow workers to purchase private insurance to top-up the difference between wage-loss benefits and their regular take-home pay.

32. The Act should be amended to allow workers to top-up the difference between wage-loss benefits and their regular take-home pay using a CPP Disability pension.

33. The Act should be amended to allow the WCB to match an employer's contribution to a worker's pension, to a maximum of seven percent, when an employer contributed more than five percent to the worker's pension.

34. The Act should be amended so that awards for permanent impairments be calculated as follows for 2005 accidents: $1,030.00 for each full percentage of impairment less than 31 percent and $1,240.00 for each percentage of impairment above 30 percent for a 2005 accident. These values will continue to be indexed annually.

35. The Act should be amended so that lump-sum awards granted to surviving spouses and partners not be reduced by the value of impairment awards granted to the worker prior to his or her death.

36. The Act should be amended so that the date of death will apply when determining benefit levels for dependents.

37. The Act should be amended so that the amount granted to cover funeral expenses is increased to $9,310.00 in 2005 and that this amount be indexed annually.

38. Present provisions in the Act that reduce impairment awards and survivor lump-sum benefits on the basis of age should be removed.

39. Although it is the employer's responsibility to make provision for the transportation of injured workers to a hospital, the Act should be amended so that any costs associated with this transportation are paid by the WCB.

40. The WCB Board of Directors should continue to pursue partnerships with service providers to facilitate timely medical diagnosis, treatment, and rehabilitation.

41. Return-to-work obligations on pre-accident employers should be introduced in the Act, subject to certain conditions, including:

> The worker would have to have been employed full-time or regular part-time by the employer for at least one year prior to the accident.

> Re-employment obligations would be in effect for six months from the date the worker is declared medically fit to perform the essential duties of his or her pre-injury job or other suitable work.

> Only employers who employ 25 or more full-time or regular part-time workers would be obligated to re-employ injured or ill workers.

> Employers would have a duty to accommodate the worker by modifying the work or the workplace, unless such accommodation causes the employer undue hardship.

> When re-employment obligations under the Act conflict with a collective agreement that is binding on an employer and these re-employment obligations are more liberal than those contained in the collective agreement, these re-employment obligations will prevail.

> Notwithstanding a mandated right to re-employment, employers would retain the right to lay-off or terminate workers for bona fide business reasons unrelated to the workplace injury.

42. The Act should be amended so that employers and workers are required to notify the WCB when a worker returns to work.

43. The Act should be amended so that, when the WCB determines that a worker is unable to return to work for medical, educational or other reasons, a worker may commute any future financial benefits to a lump-sum settlement.

44. The fine and penalty sections of the Act should be consolidated into one section.

45. The Act should be amended so that fine and penalty levels are adjusted to match increases to the annual consumer price index from 1992 to 2004, and are then indexed by the consumer price index annually.

46. The Act should be amended so that time limits for prosecutions which are currently set at six months are raised to two years.

47. Fines and penalties for the enforcement of proposed amendments should be established in the Act, consistent with the levels proposed in Recommendation 45 and indexed annually by the consumer price index.

48. The WCB Board of Directors should establish an ongoing awareness and educational campaign for both workers and employers so that all may know and understand their claims reporting responsibilities and rights.

49. The Act should be amended so that the definition of claims suppression is broadened to include any action taken to prevent the filing of a claim or to interfere with a claim once filed.

50. An administrative penalty, consistent with the levels proposed in Recommendation 45, should be established for any person who attempts to suppress claims or to interfere with a claim once filed.

51. The Act should be amended so that no employer, worker, union or person acting on behalf of an employer, union or worker shall take or threaten discriminatory action against a worker who reports alleged claims suppression or who reports interference with a claim to the WCB.

52. The WCB Board of Directors should widely distribute these guidelines for fair treatment and take action to give them effect.

53. The Act should be amended to clarify that neither the WCB nor the Appeal Commission will determine the constitutionality of the Act.

54. The Act should be amended so that a worker has a clear right to file a claim in a situation when a previous injury of the same type has occurred, and to have that claim adjudicated on its merits.

55. The Act should be amended to broaden the mandate of the Worker Advisor Office to include offering advisory services to all WCB clients and to change its name to the WCB Advisor Office to reflect its new mandate.

56. The Act should be amended to grant workers and employers access to any files created by a worker or employer advisor regarding them.

57. The Act should be amended so that the WCB Advisor Office is accountable to the WCB Board of Directors and receive its budget from the WCB, but that it operate and be housed independently of the WCB.

58. WCB policy should be amended to grant workers the right to bring any person of their choosing to a medical examination for the purpose of support, not advocacy.

59. The Act should be amended to grant employers the right to request an MRP.

60. WCB policy should be amended to grant workers and employers the right to pose questions at an MRP.

61. WCB policy should be amended so that medical reports obtained by claimants during a reconsideration and which add new or relevant information, or information that clarifies a diagnosis, be paid for by the WCB, regardless of the outcome of the reconsideration.

62. The section on "frivolous appeals" should be removed from the Act.

63. The Act should be amended to allow the Appeal Commission to correct clerical and typographic errors in its decisions.

64. The Fair Practices Office should be established within the Act, but its duties and mandate should continue to be set by the WCB Board of Directors.

65. The Act should be amended to require the Government of Manitoba to conduct a public review of the Act every 10 years.

66. The Act should be written in plain, consistent language and reorganized in a logical, sequential, and grouped manner.

67. Definitions throughout the Act should be updated and clarified where necessary.

68. The Board of Directors should ensure that procedures are developed to strengthen the ability of WCB staff to provide timely and effective transition services to workers and their families.

69. The Board of Directors should consider mediation as one of several aids in resolving disputes between the WCB and its clients.

70. The Act should be amended to grant the Chairperson of the Board of Directors a vote only in the case of a tie.

71. The Act should be amended so that members of the Board of Directors are appointed for one- to four-year terms and that starting times for these appointments are staggered.

72. The Act should be amended to recognize a separate and distinct Audit Committee of the Board of Directors.

73. The Act should be amended to require the Government of Manitoba to appoint an independent auditor to conduct a value-for-money audit of the WCB every five years.

74. The Act should be amended to make the Investment Committee accountable to the WCB Board of Directors.

75. The WCB Board of Directors should set investment policy.

76. The Act should be amended so that the Investment Committee will consist of the WCB Chairperson or his or her designate, the Deputy Minister of Finance, or his or her designate, and three other people, one representing employers, one representing workers and the other the public interest, the appointments to be made by the Lieutenant Governor in Council on the basis of their investment knowledge and skills.

77. The Act should be amended so that the WCB's corporate powers and authority are stated in such a way that the WCB has the powers necessary to carry out its mandate.

78. The Act should be amended to allow the WCB to enter inter-jurisdictional agreements with other workers compensation authorities and other insurers inside and outside Canada.

79. The Act should be amended to allow claimants to receive temporary compensation in one jurisdiction and later elect compensation in another.

80. The Act should be amended to confirm the WCB's right to conduct third-party actions for accidents that occur outside Manitoba.

81. The WCB Act should be amended to allow WCB employees to run as candidates for public office and have the same rights to do so as civil servants.

82. The Act should be amended to define attending health-care providers in a more generic manner and providers should be more specifically defined in regulation.

83. The reference in the Act to "osteopaths" should be deleted, as this specialty is obsolete.

84. The reference in the Act to a "medical referee" should be deleted, as this provision was made obsolete by the introduction of Medical Review Panels.

85. The Act should be amended to expand the definition of a treating physician to recognize a duly qualified practitioner who regularly and lawfully practices in Canada.

86. The Act should be amended to protect the WCB and its agents from legal actions or proceedings.

87. The Act should be amended so that the WCB, its agents and records are not required to attend and participate in any legal proceeding where the WCB is not a party.

88. The Act should be amended to state that the WCB may allocate experience to new employers.

89. The Act should be amended so that the deemed cost of fatal claims for rate-setting purposes may be any reasonable amount based on actuarial principles and that is approved by the Board of Directors.

90. The reporting sections of the Act should be modernized to permit the use of new technologies, including electronic media and the Internet.

91. The Act should be amended to permit employers to pay assessments based on actual payroll in arrears.

92. The Act should be amended to allow the WCB to transfer the costs of non-specific injuries from the employer to the collective pool of employers.

93. WCB policy should be amended to limit retroactive rate calculations to the previous five years.

94. The Act should be amended to require the Appeal Commission to prepare and publish an annual report to the Minister.

95. The Act should be amended to allow the Chief Appeal Commissioner to determine whether an appeal commissioner has an actual or apparent conflict of interest, and to delegate this role to another presiding officer for determination if the matter involves the Chief Appeal Commissioner.

96. The Act should be amended so that Appeal Commissioners are not appointed to the WCB Board of Directors.

97. The Act should be amended so that appointments to the Appeal Commis for fixed terms, but so that Appeal Commissioners whose terms have e may optionally be allowed to cont working on cases that are in pro

98. The Act should be amended to a Chairperson of an MRP, on behalf of MRP, to invite consultants to attend an order further medical testing.

99. The WCB Board of Directors should consult stakeholders on whether to rename the WCB to reflect its mandate for prevention.

100. The WCB Board of Directors should establish, in consultation with its stakeholders, a clear and transparent process to track the cost implications of these recommendations.

Appendix A:

List of Presenters/Submissions Received

Winnipeg – April 14, 2004

Neil Garvin

Nestor Chubaty

Cathy Gervais

Rob Hilliard (Manitoba Federation of Labour)

Ken Campbell (Consultant)

George Czmola

Alex Forrest, Rob Labosssiere & Vic Basarowich (United Firefighters of Winnipeg – UFFW)

Stuart Briese, Joe Masse & Ron Bell (Association of Manitoba Municipalities)

Allan Roschuk

Spencer Sichewsky

Roger Debusschere (Employer)

Dave Hildebrand

Stephen Copen (Employers Task Force, WSH & Workers Compensation)

Darrell Larson

Charles Birks

W.G. McLeod

Art Friesen

Gordon Fargey

Matthew Lovelace

Jake Dyck

Ed Latta

Bob Constance

Brandon – April 19, 2004

Terry Parlow (Brandon Professional Firefighters)

Jim Devereux

Dale Holmstrom

Gerald Allen

Beverley Pavlek

John Fehr

Randy Brown

Fran Sparks

Joe Liza

Flin Flon – May 03, 2004

Ian Cooper & Kathy Crone (Hudson Bay Mining & Smelting Company)

Hank Klunder

Myles Kennedy (Worker Advocate)

Paul Bada

Tom Lindsey (United Steelworkers of America – Local 7106)

Rick MacKenzie

Roland & Connie Pruden

Jerry Degelder

Thompson - May 04, 2004

Shane Mosley & Bill Vickman (INCO Ltd.)

Les Ellsworth (United Steelworkers of America – Local 6166)

Marty Sanders (United Steelworkers of America – Local 6166)

Ray Berthelette (Thompson Labour Committee)

Ric Boxell (United Steelworkers of America – Local 6166)

Robert Desjarlais (United Steelworkers of America – Local 6166)

Blair Hudson (United Food & Commercial Workers Union)

Tyrone & Karen Sass

The Pas - May 05, 2004

Chris Parlow (Industrial Wood & Allied Workers – Local 324)

Dwayne Yaworski

Gordon Landriault (The Pas Labour Committee)

Davina Clousen

Wilf Cudmore

Hank Randrup

Irene Salamandyk

Bill Benson (Worker Advisor)

Donna Janze (MGEU Worker Advisor Office)

Dauphin - May 06, 2004

Duane Stewart

Newt Thompson

Terry Roswell

Ernie Kuba

Selkirk - May 10, 2004

Harvey Levin (Worker Advocate, Steelworkers Union - Local 5442)

George Walker

Daniel Wilkinson

Roderick Pakoo

Gary Frost

Betty Anne Wardrop & James Wardrop

Dennis Lafreniere

Doug Eames

Beausejour - May 18, 2004

Tom Tonner (Tantalum Mining Corp. Canada Ltd.)

Gordon Thome

Jackie Olson

Ernest Kolton

St. Boniface - May 20, 2004

Brian Stewart & Mary Ann Jakimeczko (Manitoba League of Persons with Disabilities)

Albert Cerilli (Manitoba Federation of Union Retirees)

Barry Simoneau (Mining Association of Manitoba)

Robert Ziegler (UFCW)

Robin Duncan

Marianne Trapp (UFCW)

Karen Traynor (UFCW)

Ken Haines (UFCW)

Shaun Sweeney (UFCW)

Paul Sun (UFCW)

Al Westiuk

Peter Hildebrand (UFCW)

Kelly Sankar (UFCW)

Mustafa Ibrahim

Fred Dugdale

Winnipeg – June 01, 2004

Glenn Leaf

Pat Isaak, Art Reimer & Judy Edmonds (The Manitoba Teachers' Society)

Dave Gylywoychuk (Manitoba Heavy Construction Association)

Carol Loveridge (MFL Occupational Health Centre)

Dr. Gord Partridge & Dr. Roland Bohemier (Manitoba Chiropractors Association)

Don McLean (Winnipeg Police Association)

Alfred Schleier (Winnipeg Construction Association)

Barbara Shay, Heather Howdle & Norma Colly (Canadian Physiotherapy Association – Manitoba Branch)

Gary Melynk & George Fraser (Massage Therapy Association of Manitoba)

Karen James & Chasity Remillard

Dave Angus, Bill Gardner & Chuck Davidson (Winnipeg Chamber of Commerce)

Dawn Tocher

Gregory Toomer

Stan Bialkoski

Tony Caputo

Brenda Oliver & Rick Farley (Custodian Group, Seine River School Division)

Winnipeg – June 02, 2004

Sandra Madray & Dennis Murphy (Chemical Sensitivities Manitoba)

Leo Bahuaud & Roberta Mitchell (Canadian Union of Postal Workers (CUPW))

Craig Cormack (City of Winnipeg)

Dr. Allen Kraut (Department of Internal Medicine, University of Manitoba)

Cathy Walker, Dale Patterson & Scott McLaren (Canadian Auto Workers)

Quan Hai Tonthat (MFL – Occupational Health Centre Cross Cultural Community Advisory Committee)

Richard Papineau (PACE Workers Union – Local 7-1375)

Neil Cohen (Workplace Stress Initiative)

Maureen Hancharyk (Manitoba Nurses Union)

Darlene Parsons (President CUPE – Local 731)

Shelly Wiseman (Canadian Federation of Independent Business)

David Zirk (United Steelworkers of America)

Catherine Stearns, John McMaster & Joe Sokoloski (Workers Organizing Resource Centre)

Wayne Breland

Howard King

John Olynick

Linda Ellis & Jim Girden (Amalgamated Transit Union – Local 1505)

Darren James (Health & Safety Chairperson, Canadian Autoworkers Union)

Cliff Anderson & Gord Franklin (United Steelworkers)

Michael Deley (Unit Chairperson, Canadian Autoworkers Union)

Romeo Ducharme (Amalgamated Transit Union – Local 1505)

Daniel Pawluk

Kevin Conroy

Brian Burchart

Gimli - June 03, 2004

Renald Bonin

Frank Kovitz

Morden - June 22, 2004

Lyle Robideau, (Corporate Health & Safety Manager, Westman Inc.)

Ellen Olfert (SAFE Workers for Tomorrow)

Steinbach - June 23, 2004

Judy Fraser & Trevor Boulanger (Minerva Manitoba)

Bert Basarowich

Graham Starmer (Manitoba Chambers of Commerce)

Jim Baker (Manitoba Hotel Association)

Stephen Copen (Manitoba Employers Council)

Dorothy Wigmore

Andrew Dolhy (Manitoba Professional Ergonomics Society)

Donald Morin

Portage la Prairie - June 24, 2004

Ted Mansell (Service Employees International Union)

Gordon McGillivary & Sandy Jackson (Tataskweyak Cree Nation, War Lake First Nation, Nisichawayasihk Cree Nation, Fox Lake Cree Nation, York Factory First Nation, Manitoba Keewatinook, Ininew Okimowin & Manitoba Metis Federation)

Corey Jowatt (Professional Fire Fighters Association, Portage La Prairie)

Sherry Holstrom

Kevin Rebeck (CUPE Manitoba)

Rick Farley (Manitoba Government Employees Union (MGEU))

Presentations Received By Mail/Email/Fax

Al Granovsky

Ed Paquette & Debra Janella

Kate Doerr

T. Graham

Jim Overly

Allan Woodhall

Kate Frain

Pat Ripley

JELDWEN

Richard Ross Dnistransky

J. Foreman

Anonymous (7)

Ron Kostynuik

B. Resendes

Chris Cote

Norm Wasnie

John Simmonds

Tim Klaptiuk

Victor & Helen Kelbert

Amalgamated Transit Union – Local 1505

Oswald Construction

Manitoba Trucking Association

Jocelyn Dechaine

Keystone Agricultural Producers

Canadian Centre for Policy Alternatives Manitoba

Case Management Canada Inc.

Ray Kowalchuk

Lori Amedick

Charles Tabin

Adult Learning & Literacy

The Manitoba Food Processors Association

Glen Michalchuk et. al.

Sandy Vermette

Jean Vaillancourt

Pablo Jajalla

V.M. Boyce & Dennis Ruggles (Empowerment Skills Program)

Operation Engineers of Manitoba – Local 987

Regional Health Authorities of Manitoba

Dr. Robert Chase (MFL Occupational Health Centre)

Manitoba Pork Council

Canadian Manufacturers & Exporters

Manitoba Hydro

Appendix B:

Brief History of Workers Compensation in Manitoba

The evolution of Manitoba's workers compensation legislation can be traced through legislation, Royal Commission reports, and studies launched to investigate the WCB and the *WCA*. Recommendations from these reports provide insight into the changes that have occurred over time.

1917 The Workers Compensation Board was created to administer a compensation system for injured workers. Wage loss benefits were based on 55% of gross average earnings.

1919 An Act was passed by Canada providing for payment of compensation to workers of the federal government, to be administered by the provinces or another body approved by the Governor General in Council.

1920 Accident Fund in Manitoba funded by an assessment of all classified employers, to compensate injured workers.

1921 Wage-loss benefits increased to 66⅔% of gross average earnings.

1951 Second Injury Fund established by an assessment against all classes, to be used to cover the claims costs for workers suffering enhanced disabilities that, in the opinion of the WCB, are due to previous disabilities.

1953 Wage-loss benefits were increased to 70% of gross average earnings.

1956 Wage-loss benefits were increased to 75% of gross earnings.

1957 The Turgeon Commission was established to inquire into and investigate every aspect of *The Workmen's Compensation Act*.

1959 The recommendations of the Turgeon Commission were implemented

> Created first medical appeal board

> Coverage expanded to include the Crown, retail, hospitals/nursing homes, hotels and restaurants, radio stations, municipalities, and clerical workers in industries covered by the Act.

1965 Proclamation of *The Employment Safety Act* transferred responsibility for industrial accident prevention from the Department of Labour to the WCB.

> First merit/demerit rating system put in place for employer assessments.

1971 WCB designated to act on behalf of the Attorney General's Department to administer *The Criminal Injuries Compensation Act*.

1972 Further general amendments to the *Act* included an expansion of coverage to new classes of workers and an increase in pensions and benefits.

1974 *The Workmen's Compensation Act* was renamed *The Workers Compensation Act*, to reflect the participation of women in the workplace.

1977 Responsibility for industrial accident prevention was transferred from the WCB to the Department of Labour. This occurred when *The Employment Safety Act* was repealed and *The Workplace Safety and Health Act* was proclaimed.

1980 The Lampe report was submitted. The tripartite committee, commissioned by the Lyon government in the late 1970s, made recommendations on how to tighten up Board policy and procedures.

1982 In response to a Board employee's public allegations of mismanagement and unfair treatment of claimants at the WCB, a report on the entire field of workers compensation by Inspector D.C. Cooper of the RCMP Commercial Crime Section was released. As a result,

> the Commissioners and senior management of the WCB were replaced

> a private consultant firm was employed (CERECO Inc.) to aid the new Board and to conduct a management review

> the rehabilitation program and procedures of the Board were to be reviewed and

> worker advisors were hired and mandated to assist claimants in pursuing their claims through the system.

1983 The CERECO report was released, criticizing the Board's management practices.

1985 A Legislative Review Committee led by Brian King was formed with the broad mandate to review the *WCA*, policies and directives of the WCB and to recommend improvements to the *WCA*.

1987 The King Report was submitted. Its recommendations dealt with benefits, the adjudicative process, administrative framework, and financing the program.

1990 Bill 56 altered the administrative framework of the compensation system. The Bill separated the appeal function from administration by creating a separate Appeal Commission. Other changes included

> establishing a policy committee of the Board of Directors

> stipulating that government must consult with employer and labour communities before making

appointments to the Board of Directors and Appeal Commission

> stiffer penalties for fraud and late payment of assessments. Payroll underestimation or non-reporting by employers became subject to a fine.

1991 Bill 59 changed the compensation system from one based on disability to one based on loss of earning capacity and/or permanent impairment.

1992 Bill 59 (the New Act) came into effect on January 1, 1992. It provided for

> wage loss benefits @ 90% of net income (80% after 2 years)

> lump sum awards for permanent impairment

> life insurance and retirement annuities for long-term claimants

> a 20% increase in maximum insured wages (to $45,500)

> a provision for additional supplementary benefits

> automatic indexation of benefits

> preventive vocational rehabilitation

> experience-related assessments, and a merit/surcharge system

> clarification of benefit entitlements arising from diseases

> technical and other amendments

1999 Special payments were made to certain dependent spouses of deceased workers, and survivor benefits were re-instated for others.

2001 Rights to benefits and services were extended to same-sex couples.

2002 The *WCA* was amended to include a rebuttable presumption of compensation for full-time firefighters who are regularly exposed to fire scene hazards (other than forest fire scenes) for a prescribed minimum period and who contract primary site brain, bladder or kidney cancer, primary non-Hodgkin's lymphoma or primary leukemia. The minimum period of employment for each type of cancer is set out in regulation.

2004 The definition of common-law partner was broadened.

Appendix C: Costing of Recommendations

The costs of the recommendations for legislative changes are provided in:

> **Schedule 1a** – Compulsory Coverage – New Employer Pool, and

> **Schedule 1b** – Existing Employer Pool

A cost projection was included when a recommendation generated a significant cost or represented a significant benefit change for the individuals affected by the change. The costs are documented in terms of impact to the WCB.

Coverage – New Employer Pool
Costs associated with the recommended extension of compulsory coverage were calculated using the benefit structure in the existing Workers Compensation Act. A percentage increase was then used to recognize and include the additional costs which would result from the recommended changes to the existing Act (noted in Schedule 1b).

It is anticipated that assessment rates for new employers will be set in such a way as to create a cost-neutral effect to the WCB and to the existing employer pool. However, it should be noted that during the first several years of implementation, assessment rates will be subject to annual adjustments until actual claims costs and experience reach a level of relative stability.

Existing Employer Pool
These employers will be assigned incremental costs arising from any legislated changes to benefits paid to their workers. Costs for coverage of new employers will not affect the costs of the existing employer pool.

Overall Costing Framework
All costing information is expressed in terms of expected incremental changes to total annual claim costs incurred expense and total annual administration expense.

The annual claim costs incurred expense represents the estimated total cost of the new claims that arise in that year. It includes payments made in the current year for those new claims, as well as the present value of estimated future payments for those claims. Annual administration expense includes the cost of WCB staff and other infrastructure.

Cost Ranges for Total Costs

The estimated cost ranges shown in Schedule 1a are broader than those in Schedule 1b. The estimates in Schedule 1b are a reflection of historical claims data from the industries that have been covered by the Manitoba WCB program for many years. That history provides some insight and confidence about the degree of accuracy attributable to estimates of future cost outcomes.

On the other hand, there is less precision in calculating future cost outcomes for industries where there is little or no Manitoba cost experience. To a large extent, those estimates draw upon the cost experience of other Canadian WCBs in those industries. Consequently, those estimates reflect a broader range of potential costs.

Costing Summary - Schedule 1a

Recommendations for Legislative Changes to Extend Compulsory Coverage to a New Employer Pool

Proposed Legislative Change	Probable Total Cost – (Claims Cost plus Administration Cost)	New Revenue Generated from New Employer Pool	Net Cost to WCB
Recommendation 6 WCB coverage of workplaces should be extended gradually over a three- to five-year period beginning with the inclusion of higher-risk workplaces that are not already covered.	About $10.7 million to $24.0 million per year.	About $10.7 million to $24.0 million per year.	Neutral
Recommendation 10 The Act should be amended so that individuals engaged in work-experience programs are considered to be workers.	About $1.0 – $1.3 million per year.	About $1.0 – $1.3 million per year.	Neutral
Recommendation 11 The Act should be amended so that resident family members of business owners are considered to be workers.	About $3.7 – $5.6 million per year.	About $3.7 – $5.6 million per year.	Neutral
Recommendation 7 The extension of coverage should only occur after employers and workers in those industries where extension might occur have had a full and free opportunity for consultation and discussion.	About $0.1– $0.2 million per year over over three to five years.	About $0.1– $0.2 million per year over over three to five years.	Neutral

cont'd...

Schedule 1a cont'd

Proposed Legislative Change	Probable Total Cost – (Claims Cost plus Administration Cost)	New Revenue Generated from New Employer Pool	Net Cost to WCB
Recommendations 8, 12 and 13 (combined costing) 8. A vigorous program should be developed by the WCB to encourage low-risk workplaces to opt into WCB coverage. 12. The Act should be amended to permit non-profit and charitable organizations to purchase optional coverage for their volunteers based on risk and prevention models for volunteers, the process to be determined by regulation by the WCB. 13. This extension of coverage should be brought into effect after employers and volunteers in these organizations have had a full and free opportunity for consultation and discussion.	About $0.25 million – $0.5 million per year.	About $0.25 million – $0.5 million per year.	Neutral
Additional costs to new employer pool arising from benefit-related recommendations in Schedule 1b.*	About $0.6 million – $1.1 million per year.	About $0.6 million – $1.1 million per year.	Neutral
Total	**$16.4 – $32.7 million**	**$16.4 – $32.7 million**	**Neutral**

* Note: The benefit and other changes recommended in schedule 1b represent a 4% aggregate increase to existing claims and administration costs. A similar percentage has been used to estimate the additional costs to new employers to reflect the recommended changes described in detail in schedule 1b.

Costing Summary - Schedule 1b

Recommendations for Legislative Changes to the Existing Employer Pool

Proposed Legislative Change	Probable Total Cost – (Claims Cost plus Administration Cost)	New Revenue Required from Existing Employer Pool	Net Cost to WCB
Recommendation 4 The Act should be amended so that the costs of enforcement as currently undertaken by the WSHD, be borne by the general revenues of the Province of Manitoba.	About $5.0 million *reduction* per year.	None	About $5.0 million *reduction* per year.
Recommendation 19 The results of the study currently being undertaken among volunteer firefighters in Manitoba should guide whether to expand the sections of the Act regarding firefighters to volunteer and part-time firefighters.	About $.5 million per year.	None	About $.5 million per year.
Recommendation 21 The Act should be amended so that a worker's CPP contributions are not deducted to determine net average earnings.	About $1.5 million per year.	None	About $1.5 million per year.
Recommendation 22 The Act should be amended so that wage-loss benefits are calculated with no reduction to 80 percent after two years.	About $2.5 – $3.0 million per year.	None	About $2.5 – $3.0 million per year.
Recommendation 24 The Act should be amended by removing the limit on insurable income.	About $1.0 million per year.	Employers with workers whose earnings exceed the current maximum will pay an increased premium per year. Total increases will be about $1.0 million per year.	Neutral

cont'd...

Schedule 1b cont'd

Proposed Legislative Change	Probable Total Cost – (Claims Cost plus Administration Cost)	New Revenue Generated from New Employer Pool	Net Cost to WCB
Recommendation 25 The Act should be amended so that a worker's wage-loss benefits will not be less than 100 percent of the minimum wage at the time of the accident.	About $0.3 million per year.	None	About $0.3 per year.
Recommendation 26 The Act should be amended so that employers pay workers who experience a workplace injury or illness their regular net income for up to one full pay period and be reimbursed by the WCB for all but the day of the accident.	About $0.25 million per year.	None	About $0.25 million per year.
Recommendation 27 The Act should be amended so that workers who are 61 years of age or older will be eligible to receive wage-loss benefits until they are fit to return to work, or for four years, whichever comes sooner.	About $0.25 million per year.	None	About $0.25 million per year.
Recommendation 33 The Act should be amended to allow the WCB to match an employer's contribution to a worker's pension, to a maximum of seven percent, when an employer contributed more than five percent to the worker's pension.	About $0.15 million per year.	None	About $0.15 million per year.
Recommendation 34 The Act should be amended so that that awards for permanent impairments be calculated as follows for 2005 accidents: $1,030.00 for each full percentage of impairment less than 31 percent and $1,240.00 for each percentage of impairment above 30 percent for a 2005 accident. These values will continue to be indexed annually.	About $3.5 million per year.	None	About $3.5 million per year.

cont'd...

Schedule 1b cont'd

Proposed Legislative Change	Probable Total Cost – (Claims Cost plus Administration Cost)	New Revenue Generated from New Employer Pool	Net Cost to WCB
Recommendation 35 The Act should be amended so that lump-sum awards granted to surviving spouses and partners not be reduced by the value of impairment awards granted to the worker prior to his or her death.	About $0.05 million per year.	None	About $0.05 million per year.
Recommendation 37 The Act should be amended so that the amount granted to cover funeral expenses is increased to $9,310.00 and that this amount be indexed annually.	About $0.05 million per year.	None	About $0.05 million per year.
Recommendation 38 Present provisions in the Act that reduce impairment awards and survivor lump-sum benefits on the basis of age should be removed.	About $0.04 million per year.	None	About $0.04 million per year.
Totals for Changes affecting existing pool of Employers	**$5.5 – $6.0 million**	**$1.0 million**	**$4.5 – $5.0 million**

I agree that these projections are a reasonable estimate of the costs of coverage extension and benefit change recommendations and I endorse them.

Doug Sexsmith,
President and CEO
Workers Compensation Board of Manitoba.